

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

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DEARREA KING, Adm., of the)
ESTATE OF TYREE KING,) CASE NO. 2:18CV1060
Plaintiff,) JUDGE EDMUND A. SARGUS, JR
-V-) CHIEF MAG. JUDGE ELIZABETH
THE CITY OF COLUMBUS, et al,) P. DEAVERS
Defendant.)

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CHRISTOPHER M. COOPER, Adm.,)
Of the ESTATE OF DEAUNTE) CASE NO. 2:19CV3105
BELL-McGREW,)
Plaintiff,) JUDGE GEORGE C. SMITH
-V-) CHIEF MAG. JUDGE ELIZABETH
THE CITY OF COLUMBUS, et al,) P. DEAVERS
Defendant.)

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JAMES J. ENGLAND,) CASE NO. 2:19CV1049
Plaintiff,) JUDGE SARAH D. MORRIS
-V-) MAGISTRATE JUDGE KIMBERLY
THE CITY OF COLUMBUS, et al,) A. JOLSON
Defendant.)



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2 The video teleconference deposition of CHIEF
3 KIMBERLY K. JACOBS, a witness herein, being called by
4 the Plaintiffs as if upon cross-examination under the
5 statute, and taken before Megan A. Medved, a Notary
6 Public within and for the State of Ohio, pursuant to the
7 agreement of counsel, on Tuesday, December 1st, 2020, at
8 10:00 a.m., at the Offices of Tackla Court Reporting,
9 LLC, 1020 Ohio Savings Plaza, 1801 East 9th Street, City
10 of Cleveland, County of Cuyahoga, and the State of Ohio.

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P-R-O-C-E-E-D-I-N-G-S

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CHIEF KIMBERLY K. JACOBS, of lawful age, a
witness herein, having been first duly sworn, as
hereinafter certified, deposes and says as follows:

- - - -

CROSS-EXAMINATION OF CHIEF KIMBERLY K. JACOBS

BY MS. GELSOMINO:

**Q. Good morning. Could you please state your full
name for the record?**

A. Kimberly K. Jacobs.

**Q. What's your current relationship to the Columbus
Division of Police?**

A. I'm retired.

Q. When did you retire?

A. February of 2019.

**Q. Okay. Do you do anything for the division
anymore other than show up to depositions like this?**

A. I have a tangential relationship in the sense
that I'm the executive director of the Columbus Police
Foundation, and the foundation supports events and
activities that the CPD needs help with some financial
funding such as the trips to Washington to visit the
Holocaust Museum and the African American Museum.

Q. What else does that foundation do?

1 A. Provides funds for foods. We did during Covid
2 early on for some of the dispatchers working very long
3 shifts. We've supported buying tourniquets for officers
4 to carry, so they could use them on people that they
5 come across that might be bleeding. Provided little
6 bags of trinkets for the kids that go to summer youth
7 camps. We're working on a project with COSI to build
8 interactive kiosk displays that would be taken out to
9 like libraries, boys and girls clubs, so that kids can
10 interact with the officers that would be there and learn
11 more about policing and get to know officers more.

12 **Q. Okay. So is there anything that this foundation**
13 **does other than like raising money, and I don't want to**
14 **call it charity, but these kind of like community**
15 **events?**

16 A. Not too much, no. It's mostly those programs
17 that I just mentioned.

18 **Q. Okay. Do you do any kind of advising about any**
19 **policies or anything within the division?**

20 A. Does somebody from the division consult with me?

21 **Q. Yes.**

22 A. Not in any official or informal sense, no. I've
23 had conversations with CPD personnel since I've been
24 retired about things going on, but I wouldn't call it
25 consulting in any shape.

1 **Q. What kind of issues have they brought to you?**

2 A. Just what's going on.

3 **Q. Okay.**

4 A. Current events basically.

5 **Q. Have you like reviewed any policies or weighed**
6 in on any disciplinary determinations since you retired?

7 A. You broke up a little bit. I think you said
8 have I reviewed any policy recommendations.

9 **Q. Any policy or policy recommendations or**
10 disciplinary determinations, or anything related to
11 those areas?

12 A. I wouldn't describe it that way with anybody
13 from CPD, no.

14 **Q. Okay. So I kind of jumped into this and I**
15 forgot to remind you of some of the deposition rules. I
16 know you've done depositions before. Just as a
17 reminder, let's not talk over each other. Make sure
18 that you answer everything out loud so that Megan can
19 write it down. The goal is we need a nice, clean
20 transcript.

21 If you don't understand anything, as you just
22 did, please just tell me. That goes all the time for
23 depositions. If you don't understand the questions,
24 just tell me that you didn't understand, but
25 particularly with Zoom depositions sometimes there's

1 like weird noise or that Internet connection may just
2 break in-and-out, so just tell me. I found that we all
3 have to give each other a little extra grace in a Zoom
4 deposition, but if we do that it's quite nice because
5 you could actually be barefoot in your home instead of
6 all day long in a conference room at the police station.

7 Okay. So today you've been designated as what
8 we call a 30(b)6 witness. Basically the city has
9 designated you to give binding testimony on behalf of
10 the municipality on particular issues. Do you
11 understand that's your role today?

12 A. Yes.

13 MS. GELSOMINO: And Andy, I've found
14 with other 30(b)6's that it's best to just do this with
15 you via stipulation, but my understanding is that she's
16 been designated as a 30(b)6 for all of the seven in the
17 notice, is that correct?

18 MR. MILLER: Yeah. That's my
19 understanding.

20 MS. GELSOMINO: Okay. Only seven,
21 nothing else?

22 MR. MILLER: Yeah. That's my
23 understanding.

24 MS. GELSOMINO: Okay. Perfect.

25 BY MS. GELSOMINO:

1 Q. Do you still go by chief? Does it matter? What
2 would you like me to call you today?

3 A. You can call me Kim if you want to.

4 Q. Okay. You can call me Sarah. Okay. Number
5 seven in our Notice of Deposition, which designates the
6 topic that you're here to talk about today, "All
7 investigations, reviews, findings and outcome from 2005
8 to the present for all deadly force events involving CPD
9 members concerning: A.) The Firearm Police Involved
10 Death Review Board, B.) The chain of command policy and
11 disciplinary review, and C.) The policy and disciplinary
12 determinations made by the chief of police and/or her
13 designee." Does that sound right to you?

14 A. I think I'm able to do that.

15 Q. Okay. Perfect. Do you feel prepared to answer
16 my questions regarding those questions today on behalf
17 of the city?

18 A. I'll do my very best. I don't know what you're
19 going to ask.

20 Q. Okay. What did you do to prepare for the
21 deposition today?

22 A. I had a discussion with the attorneys, Wes
23 Phillips and Michael Halloran, and I looked at the
24 routing sheets for the Brian Mason case, and the Baase
25 case, I believe, and then I read the chief's hearing

1 transcript for the England Case.

2 **Q. Okay. The routing sheets for the -- I think it**
3 was Basse. Baase?

4 A. Yeah. Whatever.

5 **Q. Okay. That's the shooting of Deaunte**
6 Bell-McGrew, right?

7 A. I believe that's the name, yeah.

8 **Q. Okay. And then you reviewed the routing sheet**
9 for the Brian Mason case. Did you review any other
10 documents or videos, recordings, anything related to
11 those two shootings?

12 A. I don't have access to them, no.

13 **Q. Then you read the transcript regarding the Abel**
14 disciplinary hearing?

15 A. Yes.

16 **Q. Did you review anything else?**

17 A. No.

18 **Q. Okay. You mentioned that you didn't have access**
19 to anything else. Did you attempt to get access to
20 anything else?

21 A. No.

22 **Q. Do you feel that you have reviewed and gathered**
23 all of the information available or reasonably available
24 to the City of Columbus relating to all of the topics
25 that I read out to you from number seven regarding all

1 of the deadly force events since 2005?

2 A. That encompasses an awful lot of information, so
3 based on my experience and my memory, I believe that I'm
4 capable.

5 **Q. Okay. Now, this notice also requests that at**
6 **least two days prior all documents related to the above**
7 **referenced topics are produced. Did you do anything to**
8 **review documents or ensure that the necessary**
9 **documentation has been produced?**

10 A. Repeat that.

11 **Q. Sure. Did you ever see the Notice of Deposition**
12 **related to this deposition today?**

13 A. Not that I recall.

14 **Q. Okay. One of the things that's required in that**
15 **deposition is that you process all documents relevant to**
16 **the topics that you're here to testify today. Did you**
17 **do anything to review documents or ensure that they've**
18 **been produced to us?**

19 A. No.

20 **Q. Were you aware that as the designated 30(b)6**
21 **witness you have the responsibility to adequately**
22 **prepare and to review all of the information that is**
23 **known or reasonably available to the City of Columbus**
24 **relating to the topics that you've been required to**
25 **provide testimony on?**

1 A. I don't believe that I've heard those
2 instructions before.

3 **Q. Okay. Have you done anything at all to gather**
4 all of the information known or reasonably available to
5 the City of Columbus regarding these topics?

6 A. No.

7 **Q. Okay. How many days did you have to prepare for**
8 this deposition?

9 A. Whenever the notice was sent out. I've been in
10 the process of buying a house, selling a house, moving
11 for the last month-and-a-half, and just literally moved
12 into this place on Friday.

13 **Q. Right before the snow.**

14 A. Yeah. I haven't had time to do anything but
15 that.

16 **Q. Okay. That's fair. Do you remember when you**
17 received notice of the deposition?

18 A. No.

19 **Q. Okay. Was it over a week?**

20 A. Yeah.

21 **Q. Okay. Do you know if it was like a month?**

22 A. Probably been about a month.

23 **Q. Okay. When did you first learn of the lawsuits**
24 related to this deposition?

25 A. I don't know.

1 **Q.** **Okay. Did you learn about them before the**
2 notice for this deposition?

3 **A.** If they came in while I was still chief I may
4 have been told about them at that time, but subsequent
5 to that I don't believe that I've gotten an e-mail that
6 says another lawsuit has been filed.

7 **Q.** **Okay. You wouldn't receive an e-mail like that**
8 or notice of that since you left the division, right?

9 **A.** Not that I know of. Not until it became
10 relevant to a deposition or needed my involvement of
11 some sort.

12 **Q.** **Okay. So this deposition is a little different**
13 than other ones because it's related to three cases. So
14 just organizationally I'm going to try and work my way
15 through that in an orderly way. I have some questions
16 about the division and the topics that you've been
17 designated to talk about, and then I'll ask you
18 questions about the shooting of James England, who was
19 shot by Officer Abel. The shooting of Tyree King, who
20 was the child who was shot and killed by Brian Mason.
21 And then, also the shooting of Deaunte Bell-McGrew, who
22 was shot by Narewski and Baase while he was sitting in
23 the back seat of a car. I'll try to direct us the best
24 that I can throughout the deposition. In general
25 though, as the Chief of Police, how would you be made

1 aware of a lawsuit filed against one of your officers?

2 A. A copy would be sent to the chief's office in
3 the mail, and if I needed to sign for it or whatever, I
4 would, or it would be done for me by the city attorney's
5 office. Often times if it was something that, you know,
6 a document production or something like that they would
7 ask me what type of documents that I may have that would
8 be related to that particular lawsuit.

9 **Q. So are you talking about like when the actual**
10 **service of the complaint is summoned?**

11 A. Yes.

12 **Q. If you were not the one to personally receive**
13 **service of the summons of the lawsuit is there some**
14 **system within the division that would bring a lawsuit to**
15 **your attention?**

16 A. That's handled by the city attorney's office.
17 They would decide what type of notifications they wanted
18 to make. Sometimes the legal advisor might tell me if
19 there was something brewing or something had been filed,
20 but generally I wasn't told about it unless my input was
21 necessary.

22 **Q. So when you receive notice that a civil rights**
23 **lawsuit has been filed against an officer within the**
24 **department itself, was there any kind of internal review**
25 **that that would trigger?**

1 A. No. Not any type of an official policy or
2 anything along those lines. We were generally told by
3 the city attorney's office to let them handle the
4 lawsuits, and there wasn't a look back, if you will, due
5 to the fact that, you know, we had the documents
6 already. They didn't want us to do anything other than
7 just be aware of it basically until we were needed.

8 **Q. Well, was there any kind of effort from the**
9 division to take a look at what led to the lawsuit to
10 determine whether there was any tactical review that
11 could be done, or any way to learn from the actions that
12 gave raise to the lawsuit?

13 A. I would say that for most of the lawsuits that
14 had already had an investigation done that would be
15 considered the investigation. We didn't reopen
16 investigations based on the lawsuit. There have been
17 lawsuits that have been filed by people that never made
18 a complaint or never were in a situation that we
19 investigated beyond say use of force report. So some of
20 those -- I recall one that it was just a use of force,
21 and then a couple years later they filed a lawsuit, and
22 so by then, you know, people that were involved had
23 pretty much forgotten about it because it was a few
24 years later.

25 **Q. In that case was there any kind of review that**

1 **triggered any investigation?**

2 A. Just the defense of the claim by the city
3 attorney's office and trying to get people to recall.

4 **Q. Sure. So that was just like the defense of the**
5 lawsuit, nothing internal within the division in terms
6 of the lawsuit?

7 A. Correct.

8 **Q. Okay. In the case of a lawsuit are officers**
9 like flagged in any way? Is there any kind of
10 employment result or consequences as a result of a
11 lawsuit being filed?

12 A. Are we looking at lawsuit as a way to determine
13 if there's a pattern of behavior?

14 **Q. That's part of my question, yeah.**

15 A. No. Lawsuits aren't part of our early warning
16 system. Use of force are and complaints are, but
17 lawsuits are not.

18 **Q. Why not?**

19 A. The early warning system that's been in place
20 since the 1980s or before focussed on the investigations
21 that we had done ourselves basically. We reorganized
22 that system back in, I believe, 2002, and changed it up
23 a little bit, but there were many aspects that we
24 discussed as being a part of what we could look at, but
25 lawsuits was not ever incorporated. It's still pretty

1 much related to use of force and complaints because we
2 didn't have the software systems to do a much deeper
3 analysis, so no. Lawsuits are infrequent. They're not
4 something that we always have access to, and they take
5 many, many years, these are examples, to resolve. The
6 fact that a lawsuit has been filed against you doesn't
7 mean that you did anything wrong. So, no. It's not
8 been included.

9 **Q. Was there ever a discussion about whether or not**
10 **to include lawsuits in the early warning systems?**

11 A. You're talking about --

12 MR. MILLER: Objection to the extent
13 it calls for conversations with the city attorney's
14 office.

15 A. I can't say there has or has not been those kind
16 of discussions. We had a presentation several years ago
17 by a company that was trying to sell a program, and it
18 may or may not have been part of their sales pitch.

19 BY MS. GELSOMINO:

20 **Q. Did you end up going with that program?**

21 A. No.

22 **Q. Okay. You said 2002 was the reorganization into**
23 **the current iteration of EARS, right?**

24 A. Yes.

25 **Q. Were you the chief then?**

1 A. No. I was appointed in 2012.

2 Q. Okay. Were you part of the reorganization at
3 all?

4 A. Yes.

5 Q. Into EARS?

6 A. Yes.

7 Q. Can you tell me about that? How did that
8 happen?

9 A. I was the commander of the Internal Affairs
10 Bureau at the time, and there was a committee that was
11 working on trying to make revisions to that particular
12 alert systems, and they told me about it, and based on
13 the information that I had from Internal Affairs, I
14 proposed that we take a percentage of our complaints
15 rather than just a number three and try to make sure
16 that we had a deeper look. Plus, I thought it was
17 important that we had peer review instead of just a
18 chain of command review.

19 EARS was the alert systems and we implemented a
20 peer review committee personnel that volunteered to be
21 on a committee to read through all of the investigations
22 to make recommendations to the chain of command and the
23 chief, and then also to look for not just patterns in
24 the individual officer, but to look for patterns that
25 may be related to training.

1 **Q. Okay. Why would that be important?**

2 A. Well, if we're training our officers to do a
3 certain thing then if that certain thing results in a
4 lot of use of force, that would be something that we
5 would want to look at and determine whether or not
6 that's how we continued to train.

7 **Q. Has there ever been any issue in training**
8 identified?

9 A. Yes. I believe that the common peroneal strike,
10 which is basically a hit to the thigh.

11 **Q. Okay.**

12 A. And generally I think the strikes were happening
13 when the suspect or subject was on the ground and they
14 were being kneed, but I believe that the EARS committee
15 had some concerns about whether or not that was
16 effective enough to continue to train.

17 **Q. What happened with that?**

18 A. It was looked at by the training bureau. I
19 don't remember the specifics. I mean, that was a long
20 time ago. Probably before 2010.

21 **Q. Okay. So at any time then since this one issue**
22 was identified by the EARS committee related to
23 training, has there been any other issues that they've
24 identified as potentially problematic related to
25 training?

1 A. I can't say that I remember too many issues, but
2 I do remember that more than once they have had at least
3 suggested that the training bureau take a look at
4 things.

5 **Q. Okay. And have there been any changes to**
6 training implemented as a result of issues flagged by
7 the EARS committee?

8 A. I would have to say that's a good possibility.
9 I just can't tell you what that specific training was.
10 I mean, our use of force evolved and changed over the
11 years, every year practically, as we learned things, and
12 in my opinion it has improved every year. We don't just
13 keep doing things. We've incorporated scenarios that
14 don't involve use of force and deescalation and
15 decision-making and all of that kind of thing. I can't
16 tell you if it's as a result of the EARS review
17 specifically, but I do know that we've analyzed what the
18 EARS committee has come up with and talked to the
19 training bureau commander, and all of that. Those
20 records are public records, and certainly going right
21 back through them there's an annual report going back
22 through the EARS committee that's specific to that.

23 **Q. That was going to be one of my questions. I was**
24 going to ask you about how I can learn about this, like
25 whatever issues have been flagged by the EARS committee

1 related to patterns, not only with an individual
2 officer, but training and other things. Where are the
3 documents that I should look at to learn about that?

4 A. The EARS system reports. They meet twice a
5 year, so it would be a biannual report. And in the
6 report they identify the officers that are being
7 flagged; they identify the people that were on the
8 committee; identify the number of investigations that
9 they reviewed; what type of investigations they were;
10 the discussions that they had that might be relevant to
11 patterns to either an individual or to particular
12 training.

13 **Q. Okay. Now, you mentioned that you thought it**
14 **was important to consider percentages of complaints, not**
15 **just three in terms of the formation of EARS. Can you**
16 **explain that to me, please?**

17 A. Sure. The number three was just an arbitrary
18 number before. Generally if you're looking for a
19 pattern you need more than two, right? We had a huge
20 number of complaints back when Internal Affairs
21 reorganized in 2001. We had more than a thousand
22 complaints that came in that we advertised and went on
23 the media and that kind of thing, so there was a huge
24 influx of complaints and we wanted to make sure that we
25 were getting a representative sample of all complaints.

1 So not just relying on the number three for individuals,
2 but did we get a big enough sample, so we decided, I
3 believe, on five percent of all the complaints should be
4 looked at. It's been tweaked, I believe, since then.
5 It was just to make sure that we weren't only looking at
6 a certain number. It could be that four would be that
7 percentage, but we felt that it was important that we
8 looked at enough of the investigations.

9 **Q. Okay. So is that what was implemented?**

10 A. Back then it was implemented that we would take
11 a certain percentage of complaints, a certain percentage
12 of use of force investigations. I believe at that time
13 mace was a separate column.

14 **Q. Okay. So how does EARS work now? Is it still a**
15 **certain percentage of complaints that come into the**
16 **Internal Affairs?**

17 A. Being gone for almost two years, I can't tell
18 you.

19 **Q. How about when you were chief, how did it work?**

20 A. I know that we operated with a certain
21 percentage for most of my career after the 2002 change,
22 so I don't recall anything different.

23 **Q. Okay. So I feel like I'm missing something**
24 **obvious here, but I don't totally understand what you**
25 **mean by looking at a certain percentage. Can you**

1 explain that to me?

2 A. So, it's hard to explain. There's an SOP for
3 the EARS program that would probably be better at it
4 than I am at this point, but it was all written down.
5 We had an SOP that described what we were going to do,
6 but we wanted to make sure that if we had so many
7 complaints that we looked at at least five percent of
8 those complaints. There might have only been a few
9 people that had three, but we wanted to look at a good
10 group of those total complaints. If only three officers
11 had three, then we're only looking at nine complaints.
12 We wanted to look at a representative sample. So it was
13 about sampling the number of investigations rather than
14 certain officers.

15 **Q. Is that in addition to officers who had three**
16 **complaints?**

17 A. It wasn't triggered anymore by three. It was
18 triggered if you fell into that group of five percent.

19 **Q. How was that group of five percent selected?**

20 A. By the number of complaints, take five percent,
21 and then wherever that number fell. If it's three
22 complaints or four complaints or whatever, that would be
23 where it is, and now that the complaints had been
24 lowered that would have been a smaller group.

25 **Q. Okay. So say you have 100 complaints that come**

1 in during a six month period and they are against a
2 bunch of different officers, are all of the complaints
3 reviewed?

4 A. In EARS?

5 Q. No. Like in general by Internal Affairs.

6 A. Every citizen complaints get investigated that
7 gets written up, and then it's reviewed by the entire
8 chain of command, and there's a decision made on it at
9 the deputy chief level. If it was turned into a
10 disciplinary action, that would be a written reprimand
11 or above, then it came to me as well.

12 Q. So that review happens, and we'll talk about
13 that in a little bit. So how does the EARS review
14 happen? Is that like a second step?

15 A. Absolutely. That's after they've all been
16 investigated, and that's why there's a little bit of a
17 delay in going over these, but you have to have the
18 complete investigation to look at the facts. So they're
19 looking back after the chain of command has already done
20 their review, they're looking back, reading all of the
21 investigations that are part of that group, and then
22 they're going through there to see if that same officer
23 might have had a number of them.

24 Officers and supervisors move around in the
25 division of police by choice. They take different

1 assignments. So if an officer had a use of force on the
2 west side then moved to the east side and had a use of
3 force, and then had a use of force on the north side,
4 all three chain of commands might have said they're
5 fine, but the EARS committee might find that they were
6 all against women, that they were all using the same
7 kind of language. They might have said, well, there
8 wasn't much proof here and here, but put together we
9 have questions.

10 So then to ensure that people aren't moving to
11 avoid being found out, and it's to avoid the situation
12 where -- I'll give you an example. If somebody claims
13 that they got kneed in the groin and so they had to hit
14 them, you write that up and it says, he got kneed, blah,
15 blah, blah, but if that happens five times in a use of
16 force, maybe there's something or they found an excuse
17 that worked and continued to say it. But that's what
18 the EARS committee is about, to find out whether or not
19 there's patterns that chains of command might not have
20 been privy to.

21 **Q. Okay. And then the EARS committee then is**
22 reviewing even complaints that are determined to be
23 unfounded?

24 A. They're reviewing, I believe, unfounded, not
25 sustained, sustained. I believe the ones that are

1 exonerated are not part of that because the officers'
2 name is removed from an exonerated complaint per the FOP
3 contract.

4 **Q. Okay. Do you know how a complaint would be**
5 determined exonerated as opposed to unsustained or
6 unfounded?

7 A. So if somebody said they towed my car or they
8 handcuffed me behind my back and made me sit in the car
9 for a long time before they processed me, that's totally
10 within policy. If there's no rudeness associated with
11 it or nothing else associated with it, that's exonerated
12 because our policy requires the officer to handcuff
13 behind the back, so that would be exonerated. Unfounded
14 means that we didn't have proof that the allegation
15 occurred.

16 **Q. Okay. And then unsustained?**

17 A. Not sustained means that we can't tell one way
18 or the other.

19 **Q. Okay.**

20 A. It's basically a 50/50.

21 **Q. And if it's a 50/50 toss up you defer to the**
22 officer as opposed to the civilian?

23 A. I wouldn't say that at all.

24 **Q. If it's a 50/50 toss up then why is it not**
25 sustained as opposed to sustained?

1 A. I'm talking 50/50. If the vote came out 50/50,
2 who wins? In an election who wins? Nobody, right?

3 **Q. Okay. Fair enough. So unsustained does go into**
4 EARS though?

5 A. Not sustained does, yes.

6 **Q. Okay. And say an officer has like three**
7 complaints from three different zones or districts,
8 right, like you mentioned as an example, but those
9 happened over like a year, how long do they stay in EARS
10 to be considered part of a pattern?

11 A. It's not a matter of staying in EARS. EARS
12 looks back for a 12 month period, or an 18 month period,
13 I'm not sure which now, and if the complaint has dropped
14 off the timeline for EARS, then it wouldn't be looked at
15 anymore. If it's in that same period of time that
16 they're looking at it would still be considered as long
17 as the officer -- the records go off an officer's record
18 after a certain period of time. I believe it's three
19 years per the contract.

20 **Q. Now, you were in Internal Affairs before you**
21 were chief, so you could probably give me a perspective
22 on this whole issue, right? Were there ever any
23 conversations about changes to EARS other than, you
24 know, you had this one sales pitch that you mentioned
25 already, but any other conversations over that period of

1 time that you were in the command chain to make any kind
2 of changes to EARS to make it more effective?

3 A. Yes. Internally we talked about what could be
4 done; what we should be looking at. Should we include
5 sick mark offs. Should we include, you know, timeliness
6 issues. All of those ideas have been brought up and
7 talked about over the years. Sometimes it comes from a
8 supervisor pushing the idea up. Sometimes it comes from
9 a discussion that we've had at executive staff or
10 command staff, or whatever it might be.

11 That's always something that we've been
12 considering. It's just a matter of do we have access to
13 those records and are they relevant. We've also looked
14 at studies. Charlotte Mecklenburg did a study about
15 their early warning systems and they found that the best
16 prediction of future behavior is whether or not a person
17 had been disciplined.

18 **Q. And how did that impact -- what does that mean?**

19 A. You could look at 20 different things. You
20 could look at all of those different ideas about that,
21 but their research indicated that the best predictor is
22 past performance related to, you know, being outside of
23 policy basically.

24 **Q. Did that impact the way that you guys handled**
25 **discipline or EARS at all?**

1 A. That and many other things. First of all, the
2 software systems that the division of police use are at
3 best antiquated, and often times it's a database that
4 may or may not have information that would be relevant
5 to helping out. Medical records really are off limits.
6 You can't be talking about those kinds of things. So if
7 you're looking at mark offs, you have to decide whether
8 or not that's medical information that we should be
9 discussing. The information about officer's reports,
10 various other things, trying to derive that from
11 multiple different databases is extremely high
12 intensive, so we took all of that into consideration.

13 **Q. Were any changes made?**

14 A. Well, we were still doing EARS up to when I
15 retired generally the way that we had developed it in
16 2002.

17 **Q. So you didn't implement any changes as a result**
18 **of what you learned from this Charlotte study?**

19 A. Well, not just the Charlotte study, but a lot of
20 other factors came into it.

21 **Q. What about like the information that you learned**
22 **from that Charlotte study, and I'm only mentioning that**
23 **because that's the specific one that you mentioned in**
24 **terms of the best predictor being whether or not they**
25 **had been disciplined. So, was that incorporated at all**

1 into the other disciplinary structures within the
2 division of police?

3 A. Was what incorporated?

4 **Q. The information you've learned about how**
5 important a predictor of discipline can be for future
6 misconduct?

7 A. No. I wouldn't say so, because all disciplinary
8 decisions have to be based on the information at hand.
9 So somebody's past record of discipline doesn't get
10 used. Much like in court, you don't use somebody's past
11 criminal history to determine their guilt or innocence
12 in a trial.

13 **Q. Okay. I understand that. But what's your point**
14 about you don't use past disciplinary history for what?

15 A. Current disciplinary decisions.

16 **Q. Okay. So when making disciplinary**
17 determinations within the division you don't look back
18 at prior disciplinary determinations?

19 A. There's a policy about that, so I believe it's
20 in the supervisor's manual or the rules of conduct, but
21 generally they're not going to be considered unless
22 there's a pattern that is relevant to that particular
23 case. I don't know where the policy is. It might be in
24 the directive about Internal Affairs in citizen
25 complaints.

1 **Q.** Well, if past discipline is not considered, how
2 would the disciplinary body know whether or not there's
3 a pattern?

4 A. Well, I'm talking about, you know, is
5 progressive discipline -- has something along this line
6 happened during a period of time where we can progress
7 the discipline? So, if you have the similar
8 disciplinary situation prior to, depending on what type
9 of discipline, whether you could look back at that prior
10 incident and use that as a way to step-up the
11 discipline.

12 **Q.** Okay. So if there was prior discipline within a
13 year is that considered by the disciplinary body?

14 A. It depends on the type of discipline it was.
15 We're allowed to use a DCC, a documented constructive
16 counseling level for nine months. It stays on their
17 record for one year, but we're allowed to consider it
18 for nine months. This was during my tenure. I'm not
19 sure if the contract changed or not. For a written
20 reprimand you're allowed to consider it for three years,
21 and for departmental charges you're allowed to consider
22 it for four years of a similar nature, I believe is the
23 terminology.

24 MR. MILLER: I'm going to object as to
25 form because I think we're talking about two different

1 things. When you say "disciplinary determination," are
2 you saying A, something is worth disciplining, or B, the
3 determination of how many to discipline?

4 MS. GELSOMINO: I think what I'm
5 asking is whether or not there should be discipline.

6 MR. MILLER: Okay. As long as we know
7 which one we're talking about, if we're talking about
8 disciplinary determination, because I think that's where
9 the confusion is coming from.

10 BY MS. GELSOMINO:

11 **Q. Okay. Kim, I guess at this point I'm trying to**
12 **determine if whether previous discipline can be used in**
13 **deciding whether or not to discipline an officer again?**

14 **A.** So I want to be clear, the decision to
15 discipline is based on the finding of the investigation.
16 If the finding is that they've broken the rules, then
17 there's a question of what level of discipline is
18 appropriate for that particular case.

19 **Q. At what point do you consider, what were you**
20 **just telling me, like a DCC you can consider for nine**
21 **months and down the line, where does that come into**
22 **play?**

23 **A.** That comes into play when the supervisors are
24 making a disciplinary recommendation.

25 **Q. For whether or not to discipline, or for the**

1 **level of discipline?**

2 A. The level of discipline.

3 **Q. Okay. So whether or not somebody has been**
4 previously disciplined is not considered at all when
5 making a discussion as to whether or not to discipline?

6 A. I think you mean whether or not they're guilty.

7 **Q. Yeah. I guess so.**

8 A. I want to be clear, because we're not looking at
9 investigation whether or not we should discipline
10 somebody or not. We're looking at the facts to
11 determine whether or not they've committed a violation
12 of the rules. Generally we're not going to look at
13 other cases that they've been involved in to help us
14 determine guilt in this particular case.

15 **Q. Okay. That clarifies things for me. In terms**
16 of determining guilt, I imagine often times that
17 includes a credibility finding?

18 A. Absolutely.

19 **Q. So, in making those credibility determinations**
20 about whether or not that officer is telling the truth,
21 does the division consider previous disciplinary
22 findings against that officer in making that credibility
23 determination?

24 A. Well, I would say that it's the person making
25 that decision's knowledge of that particular officer and

1 situations that they may have been involved in that
2 gives them their reasoning about their credibility. Not
3 a particular case necessarily. They may or may not have
4 knowledge of previous cases. So there's no digging into
5 people's backgrounds, if you know what I mean, to see if
6 they've ever had anything like this. If I've worked
7 with somebody for five years and felt that they were
8 skirting the truth, or something like that, then that
9 certainly plays into the credibility.

10 **Q. Why is there no digging?**

11 A. First of all, the records are only kept for
12 three years per the contract, and I'm trying to remember
13 if it's the contract or if it's a rule of conduct, but
14 it's a matter of access. It's a matter of fairness. I
15 mean, we don't look into the criminal record of our
16 complainants to determine whether or not their
17 allegations of rudeness is correct either. We don't do
18 a lot of digging back, because I have found that the
19 facts of this particular case are what matters. And I'm
20 just trying to remember whether or not we have that
21 written down. I thought maybe there was something
22 written down about that either in the contract or in the
23 directive about internal investigations.

24 **Q. It seems like a lot of these decisions about how**
25 **the division considers complaints, and discipline, and**

1 for how long they consider that, and how the division
2 can consider that, is determined not by the division
3 itself, but by the FOP contract. Is that true?

4 A. The FOP contract impacts our ability to look
5 back certainly. It's an agreement between the city and
6 the FOP. Our policies, rules, and all of that are
7 created based on our knowledge of the contract and what
8 we think is the best practice. Where they meet or butt
9 up against each other is something that we have to deal
10 with.

11 **Q. Yeah. I imagine that there can sometimes be**
12 **tension there. Did you ever have the experience of**
13 **identifying some area of tension where it was the**
14 **division's determination that discipline should be**
15 **handled a certain way or reviewed for a certain amount**
16 **of time that was different than what was laid out in the**
17 **contract?**

18 A. I would say fairly often.

19 **Q. Can you give me some examples of that as it**
20 **related to discipline in particular?**

21 A. Well, as I said before, the written reprimand
22 can be considered for three years, but the records
23 disappear at three years. So if you're doing an
24 investigation and it ends three years and a day, then
25 you don't have access to the investigation anymore to

1 consider progressive discipline. There's little things
2 like that and big things that definitely impact, you
3 know, what we're able to do. You know, notice of past
4 practice, all of those kinds of things have an impact on
5 how the division is able to move through the
6 disciplinary process.

7 **Q. Did you ever participate in any contract**
8 negotiations while you were chief?

9 A. I didn't directly participate. There were times
10 when I was consulted about them, but I wasn't on the
11 team as chief. I was on the team when I was a deputy
12 chief.

13 **Q. Okay. And were there any renegotiations**
14 regarding any issues or record keeping issues?

15 A. There's always been. I mean, I believe it's
16 always something that's brought up at negotiations. The
17 city always has a proposal and the FOP always has
18 proposals, and often times the disciplinary chapter is
19 at play.

20 **Q. Do you recall whether there were any changes to**
21 that actually implemented in any of the contract
22 provisions?

23 A. I believe there's been changes each time. Those
24 are also public records.

25 **Q. Do you know any of them off the top of your**

1 **head?**

2 A. The last one, I believe, was about the amount of
3 time that a citizen complaint can be received. I think
4 it was extended from 60 days to 90 days. A long time
5 before that it was extended from 28 days to 60 days. In
6 8.4, I believe the more recent change, that was a
7 stipulation that says if an investigation isn't
8 completed in 180 days no discipline shall be leveled,
9 and I believe that's been changed to basically let an
10 arbitrator decide whether an investigation took too
11 long. Those are examples but, you know, that's a long
12 chapter. Chapter ten we made a change right around the
13 time that I became chief about whether or not we could
14 continue to hold the records of individuals that had
15 been found untruthful. Officers are required to let the
16 prosecutor know if they had a sustained charge of
17 untruthfulness, and we weren't able to tell whether or
18 not those officers were complying with that. We didn't
19 know if the prosecutor's office had a list, so we
20 negotiated for and got permission to keep a list of
21 officers that had been found to be guilty of
22 untruthfulness, and then we also were able to preserve
23 those records, I believe, indefinitely, so they didn't
24 just disappear after six years. Generally, that's going
25 to be a suspension at least or a termination charge.

1 With a suspension charge you're allowed to keep those
2 records for six years, but you're only allowed to use
3 them for four years. It also impacted their ability to
4 switch assignments.

5 **Q. What's that list called?**

6 A. Informally I think it's called a liar's list,
7 but I don't know. It's described in chapter 10 of the
8 FOP contract.

9 **Q. Okay. How do you resolve these tensions between**
10 **what the division determines to be the right policy for**
11 **the department when there's a conflict between that**
12 **determination of the division and the FOP contract?**

13 A. It's a matter of you have to understand what the
14 rules are and then work within the rules. If the
15 contract says that you have to do something a certain
16 way, then you do it that way. If they give you a
17 deadline, then you try to get the deadline made. We
18 upped our ability to get investigations done within the
19 90 day period enormously by making sure the
20 investigators were taking overtime when necessary. If
21 you had to provide all the records like the public
22 records law in Ohio requires, then you just have the
23 records ready to go. You just know that's part of the
24 investigation. You just have a deep understanding of
25 what the rules are and the contract and telling the

1 investigators what those are and giving them the tools
2 to try to deal with them. Whatever it is. If it's how
3 long you can consider discipline, then that's how long
4 you have. At some point in time you have to decide
5 whether or not somebody's past is, you know, relevant to
6 that particular thing, or whether something can be
7 progressed or not be progressed. You know, the more we
8 know about officers we can, you know, try to guide them,
9 steer them, train them, whatever, to make good
10 decisions.

11 **Q. So that makes sense to me. The more you know**
12 about the officers, the more you know about their
13 history, their long-standing history of civilian
14 complaints, et cetera. From a layperson's perspective
15 here I would think that would be helpful in paying
16 attention to your officers and making sure that the
17 decision is on the right track. So, how do you do that
18 though if you're required by the FOP to destroy records
19 and not to consider records over an officer's entire
20 career for a longer period of time?

21 **A.** First of all, you said it's required by the FOP.
22 It's required by the contract between the City and the
23 FOP. So it's not that their giving us rules, it's
24 contract telling us what we're allowed to consider and
25 not allowed to consider. I would say in most places

1 that have a Union contract there's going to be some type
2 of a time period that they allow you to consider that,
3 and it just so happens that we have a regimented
4 schedule that's there and you just deal with it. That's
5 just the way that it is. It was agreed to and you just
6 have to live with it.

7 **Q. I understand that the division is bound by the**
8 **rules that it agrees upon, but in your experience or in**
9 **the experience of the division, have those rules that**
10 **have been agreed upon in the FOP ever impeded the**
11 **division's ability to track officers and identify**
12 **patterns of potential misconduct within the department?**

13 **A.** I wouldn't say it's impeded our ability to track
14 officers as much as it's just a matter, like, if you
15 know that somebody did something three-and-a-half years
16 ago, and they did the same behavior three-and-a-half
17 years later, it's the discipline that's based on it
18 being brand new instead of a repeat of the previous
19 offense. But you could still know who those officers
20 are, you just can't necessarily use it for a
21 disciplinary decision.

22 **Q. Do you think that negatively impacts the**
23 **division in any way?**

24 **A.** It's hard to tell. I mean, I don't know. I've
25 heard that some officers might be rude, they get away

1 with that. Certainly that can hurt the division's
2 reputation. If an officer had a history of using force
3 or something like that, that was borderline or out of
4 policy or something along those lines, and we weren't
5 able to consider it, certainly it could hurt the
6 division if somebody did something again and we should
7 have been able to prevent it through a disciplinary
8 process or whatever. There's time limits on practically
9 everything. People go to prison and they do it again.
10 We don't keep them locked up because it could have
11 happened.

12 **Q. That's true. But would you agree that a pattern**
13 of misconduct can show itself over more than a year?

14 A. Sure.

15 **Q. If somebody does one thing in February of one**
16 year, doesn't do anything until February or March of the
17 next year, and then another thing February or March of
18 the next year, in that circumstance that wouldn't be
19 tracked in EARS, right? Because it's happening only
20 once a year and it's only tracked in EARS for 12 months,
21 is that accurate?

22 A. Well, if it's actual discipline, yes, it falls
23 off the record. EARS might have access to it because
24 they're outside of the disciplinary process. They're
25 not operating under the disciplinary process. If

1 somebody didn't wear their hat and they got a DCC in
2 February, and then it fell off, and they did it again in
3 the next March, it would fall off again. Yeah. Those
4 are the kinds of patterns that you would hope that you
5 would be able to deal with. And that's just a minor
6 example.

7 **Q. Sure. But let's just say it's a person who's**
8 **kneeing someone -- or punching somebody because they**
9 **were kneed in the groin, again, your example from**
10 **earlier, if a person does that, it's a civilian**
11 **complaint about do that once every 13 months for three**
12 **years, would that kind of behavior be monitored or**
13 **identified as a pattern anywhere within the existing**
14 **structures within the subdivision?**

15 **A. Depending on it falling into the EARS lookback.**
16 **If it's not in the EARS lookback period, then no,**
17 **probably not. Other than that chain of command, if that**
18 **particular officer and the chain of command were the**
19 **same, we would still remember all of those instances and**
20 **should have already been dealing with that.**

21 **Q. It's just up to the individual supervisor in the**
22 **chain of command to remember previous civilian**
23 **complaints against their officers. It's not tracked**
24 **anywhere?**

25 **A. Remember or keep notes or something along those**

1 lines. They have certainly informal leadership going on
2 that, you know, might be because of what they know about
3 that particular officer, and they could be riding with
4 them or they could be having discussions with them.
5 They could refer them to somebody. All of those things
6 do happen. It's just not a formal process.

7 **Q. Okay. Is there any oversight of that informal**
8 **process?**

9 A. No. I wouldn't say that there is.

10 **Q. And if there's a change in command, like a**
11 **sergeant switch or something, is there any mandated pass**
12 **off of that information about a potentially problematic**
13 **officer to the next supervisor?**

14 A. Not a mandated one, no.

15 **Q. Is there any pass off encouraged in that**
16 **circumstance?**

17 A. I would say that if a supervisor had a problem
18 officer, yes, it would be encouraged that that kind of
19 information would be shared. There are a lot of
20 supervisors who understand their personnel very well and
21 want them to have the next leader take care of good hard
22 workers and know about the ones that may not be.

23 **Q. Okay. How is that encouraged by the division?**

24 A. Through leadership training, supervisor's
25 training. You know, the division's support groups, all

1 of that kind of stuff.

2 **Q. I'm sorry. Did you say division support groups?**

3 A. Informal, peer, just getting together and just
4 talking. Those kind of things. The lieutenant over the
5 supervisors are aware of -- so a lot of times sergeants
6 will move within a lieutenant's work group, so the
7 lieutenant is already aware of most of that. And one
8 sergeant might have the officers on 13th precinct, for
9 instance, and because he wants better days off he might
10 move to 14th precinct, but the lieutenant still oversees
11 both of those precincts, so the lieutenant would be
12 aware of that, and the sergeants would be in meetings
13 with the lieutenants to talk about those kinds of
14 things. It's not like you often times don't leave and
15 go to another side of the city. You're still sometimes
16 in that same work group, the sergeants, so they would
17 share information because they see each other in
18 meetings with the lieutenant or going on runs and
19 various other things.

20 **Q. Okay. But, again, that's all just informally**
21 **done, it's not tracked and there's no oversight from the**
22 **division on that, right?**

23 A. I wouldn't say it's oversight from the division.
24 The lieutenant or the commander might be keeping track
25 of that on a different level.

1 **Q.** But there's no mandated tracking from the
2 division? I'm sorry. Can you say that one more time?

3 A. The point that you were asking was --

4 MS. GELSOMINO: Let's go off the
5 record, Megan.

6 - - - -

7 (Thereupon, an off-the-record discussion was held.)

8 - - - -

9 BY MS. GELSOMINO:

10 **Q.** Since it wasn't clear before, I just want to
11 make sure that I understand that you have testified that
12 there's no division requirement or oversight by the
13 division of supervisors communicating information about
14 potentially problematic officers to new supervisors who
15 are taking over their leadership position, right?

16 A. Correct. There's no official program like that.

17 **Q.** And you testified that there's some
18 encouragement regarding this at supervisor training, is
19 that true?

20 A. Well, you know, what I'm saying is that
21 supervisors are taught how to be good leaders, and to be
22 a good leader you need to understand the people that
23 you're leading, and so you're encouraged to seek out
24 information about that by doing 360 reviews, by talking
25 to previous supervisors, other peers and various other

1 things, so those kind of leadership skills are taught,
2 and that would be in the umbrella of learning about the
3 people that you are now supervising.

4 **Q. Do you feel that the limitations set up**
5 regarding the FOP contract have had any kind of negative
6 impact on the division's ability to supervise and
7 discipline your officers in an appropriate way?

8 A. I would say that, yes. I've tried to discipline
9 people before. I've tried to, you know, do something,
10 and whether it's a past practice or something along
11 those lines, I tried to discipline somebody who lost his
12 driver's license because he had been stopped for OVI and
13 his driver's license was suspended for a year, and he
14 could not work as a police officer until he had his
15 driver's license back, and I tried to discipline him,
16 and an arbitrator ruled that he hadn't had notice of
17 this. The contract requires that you have to have
18 notice and there was no precedent for that particular
19 discipline. Is the division harmed? Well, not being
20 able to discipline somebody, it's hard to argue whether
21 the division is harmed by that. We had to take back
22 officers that the arbitrators have ruled that they
23 shouldn't have lost their jobs, yes. Have we had some
24 discipline changed because of either past practice or
25 whatever, but generally it's not for a particular

1 section like time or something else, it's because
2 somebody disagreed with our decision-making and that's
3 what happens all the time.

4 **Q. Would that somebody be the arbitrator or**
5 somebody who could potentially disagree with you?

6 A. Civil service commission also gets to weigh in
7 and sometimes there's disagreement among the chain of
8 command on whether or not there should be discipline.

9 **Q. Sure. And we'll talk about that, too. For now**
10 I'm interested in outside of the division. So have you
11 -- why do you think that disciplining officers for
12 misconduct is important to the division?

13 A. All good cops want all cops to be good. They
14 don't like working around bad cops because it makes
15 their job tougher. Bad cops impact the way that the
16 division's reputation is viewed. Bad cops can harm
17 citizens in various different ways. Whether that's
18 through the use of force or a bad experience that will
19 never be forgotten. So I think it's extremely important
20 that the division of police holds everyone accountable
21 for the rules that are implemented to protect the public
22 from a bad cop and just to provide excellent service.
23 That's the goal, is to provide excellent service. And
24 when that fails we need to try to correct that behavior.
25 Sometimes that's through training or sometimes that's

1 through the discipline process.

2 **Q. Okay. Do you think that the limitations that**
3 the division is confronted with regarding discipline has
4 ever prevented the division from being able to protect
5 the public from bad cops?

6 **A.** Generally I would say it's more often the amount
7 of evidence that's available that makes that difficult.
8 Limitations of the contract are potentially a problem,
9 but generally once we know the rules we abide by those
10 rules and we're getting those investigations completed.
11 It just comes down to sometimes, you know, again, going
12 back to an arbitrator who's a civilian, who is not
13 employed by the division of police, making a decision
14 about whether or not termination is a factor or a
15 particular disciplinary action is a factor. I believe
16 you said "bad cop," right?

17 **Q. Yeah. I was trying to use your language.**

18 **A.** A bad cop goes from somebody what's rude all the
19 time to somebody that hurts people. There's a big
20 range. So to be specific, yes, I wish that nobody was
21 rude, and I certainly pray that nobody gets hurt by a
22 cop that was out of policy basically. But the contract
23 certainly impacts our ability to discipline people, but
24 it doesn't impact our ability to train and counsel
25 people, so there's a lot of factors that influence what

1 we're able to do with officers, including the amount of
2 evidence that might have been available.

3 **Q. Can you explain that to me? The amount of**
4 evidence available can make it different to protect the
5 public from bad cops. What do you mean by that?

6 A. In cases where there's no body camera video. In
7 cases where there's no audio recording or video
8 recording. Often times we've had to rely on statements.
9 Sometimes it's physical evidence, and then sometimes
10 it's just statements. This happened, and then you talk
11 to three other people and they all describe it
12 differently. It's a matter of credibility. It's a
13 matter of did the statement make sense? Did it even
14 play out that particular way? And so, there are a
15 significant number of cases where we can't prove one way
16 or the other what happened. Less now because of the
17 body cameras, but if it's about a conversation, about an
18 action that might have happened, then it's difficult
19 sometimes to make a determination of whether or not that
20 person is in violation of the rules.

21 **Q. Have you ever attempted to discipline any**
22 officer for use of force and have that determination
23 overturned by some other body outside of the division?

24 A. Absolutely.

25 **Q. How many times? And technically, according to**

1 **the notice, I'm talking since 2005, but you tell me how**
2 many times can you tell me about?

3 A. I wasn't chief until 2012, but there was one
4 particular case, there was a shooting that happened on
5 the west side where I felt that the officer had been in
6 a situation as such that he should not have fired his
7 weapon. When the investigation was complete we talked
8 about it. It was determined that -- I determined that
9 it was outside of policy after having a chief's hearing,
10 recommended discipline for that particular officer, it
11 went to arbitration, and the arbitrator said that it was
12 a reasonable shooting.

13 **Q. What was the officer's name in that case?**

14 A. McClellan.

15 **Q. Okay.**

16 A. There was an accidental discharge, so that
17 wasn't on purpose, but an officer fired his shotgun
18 accidently inside a substation and we tried to give him
19 a departmental charge, and the Union took it to
20 arbitration, and the arbitrator gave him a strange
21 ruling. They said he needed 10 hours of training and 10
22 hours of documented counselling. And we were like,
23 "well, we don't do it in hours." So it was very
24 convoluted. There might be other ones, but I'd have to
25 look at records to do it on use of force. I've found

1 officers outside of policy on uses of force, but that's
2 the one that I recall, the McClellan case.

3 **Q. Now, like what are the documents that we could**
4 look at to figure this out?

5 A. McClellan.

6 **Q. All of them. If I wanted to know when the chief**
7 has recommended discipline and any time that it's gone
8 to an arbitrator, what kind of documents do I need to
9 look at to answer that question?

10 A. At least during my tenure we kept track of
11 disciplinary cases that came to me. If it didn't come
12 to me it was a DCC or something like that, but written
13 reprimands and suspensions and recommendations for
14 termination would come to me. We kept track of the
15 discipline that I decided, and word got pushed to the
16 director's officer in the Professional Standards Bureau
17 discipline tracking thing. It's on the intranet at the
18 CPD.

19 **Q. At what?**

20 A. Columbus Police. It's on the intranet. We
21 wanted the division personnel to see what the
22 disciplinary decisions were so that they would learn
23 from these other instances. We take the officer's name
24 off of that because of the timeline, you know. If you
25 take the name off of it then you're not in violation of

1 the contract with public information. It's the
2 discipline tracking database from the Professional
3 Standards Bureau that lists chief's discipline, and it
4 may or may not have been updated based on what happened
5 at the director's office or in arbitration. Some of
6 them might have been, some of them might not have been,
7 because they're busy and don't always go back to make
8 those updates. Like I said before, some of the
9 arbitrations take years, and some of the investigations
10 take a long time. So getting up to date with decisions
11 that happened in my office may or may not be in there,
12 but it could be something that you could then track
13 down.

14 **Q. Okay. So the best place to look is called the**
15 **discipline tracking database of the Professional**
16 **Standards Bureau?**

17 A. There's a separate discipline tracking system
18 that is maintained by human resources, but you want the
19 one from the Professional Standards Bureau that's on the
20 intranet about the chief's discipline.

21 **Q. Okay. And that would include any time that the**
22 **chief's office determined -- does that only include when**
23 **you find that there should be discipline?**

24 A. So if I had a hearing on it generally it's going
25 to be in there. There had been cases, obviously, that

1 you're aware of probably, that I've had a chief's
2 hearing and decided that there won't be any discipline.

3 **Q. Right. Would those instances also be in this**
4 discipline tracking database?

5 A. I believe so. If there were any number of
6 disciplinary cases, and I can't ensure that every single
7 one was written up, but that was the practice that if
8 there was a hearing, the Professional Standards Bureau
9 lieutenants, the discipline grievance lieutenants, would
10 prepare this statement that we put out on the intranet.
11 I would edit and approve it, and then it would be
12 published.

13 **Q. Okay. Was there any other tracking of cases**
14 that came to the level of the chief's office regarding
15 discipline?

16 A. Internal Affairs probably has some records there
17 as well, because they send a representative to the
18 chief's hearing.

19 **Q. Okay.**

20 A. I don't know what they might call that.

21 **Q. Okay. Nothing else -- sorry.**

22 A. The HR discipline tracking system would have all
23 the discipline that's been issued if it's been up to
24 date, and even though names would drop off as required,
25 they would still maintain access. We had an old, old

1 system -- I can't remember what it was. The blue screen
2 databases from way back when before 2000, we had that
3 discipline that would stay on the record just without
4 the officer's name. The techie people would probably
5 know better whether we still have access to that, but
6 we've been through different iterations of software for
7 all of the discipline tracking. Most everything should
8 be in that particular system, but names would have
9 fallen off as required.

10 **Q. Okay. Have you ever attempted to discipline an**
11 **officer and had the arbitrator uphold your**
12 **determination?**

13 A. Yes.

14 **Q. Has that ever happened in the context of use of**
15 **force?**

16 A. Yes.

17 **Q. How many times?**

18 A. One of them was a police involved shooting on
19 the east side. And I remember there was another case
20 being overturned. The Jonathan Thomas case was
21 overturned. That was out of a dog shooting, and that
22 was overturned by the arbitrator as well. But the one
23 that was upheld was Camp-Donovan, and that was -- she
24 fired at a murder suspect that she tried to apprehend,
25 he stole her cruiser, and she shot at it as he was

1 driving away, but that arbitration decision took about
2 four or five years. The city kept asking the arbitrator
3 for a decision, and he just failed to respond for years.
4 Literally. I believe it happened in 2012, and I don't
5 think that we had an answer until '18 maybe.

6 **Q. Wow.**

7 **A. Yeah.**

8 **Q. Well, certainly that kind of a delay would**
9 prevent the division from being able to do any kind of
10 retraining or anything in a timely manner, right?

11 **A. Exactly. That's why we don't rely on a lot of**
12 **stuff is timeliness.**

13 **Q. In that period of time when this discipline was**
14 **pending with the arbitrator what was the officer doing?**

15 **A. Her regular assignment.**

16 **Q. This whole period of time that she was -- what**
17 **was she disciplined for actually?**

18 **A. Outside of policy use of deadly force.**

19 **Q. So that's pretty serious.**

20 **A. She did receive the discipline. The discipline**
21 **proceeds, and then they go to arbitration, and the**
22 **arbitrator decides that should have happened. We don't**
23 **wait to discipline. We go ahead and proceed with the**
24 **discipline. And say if he found she shouldn't have been**
25 **disciplined, he would give some type of an order as what**

1 should happen with the discipline.

2 **Q. In that case she was disciplined. How about in**
3 the McClellan case, you recommended discipline in that
4 case, right?

5 A. I did.

6 **Q. Do you recall what it was?**

7 A. I'm pretty sure it was a one day suspension or
8 something along those lines.

9 **Q. And then the arbitrator overturned that, right?**

10 A. Yeah. Said it was within policy.

11 **Q. What happens if he serves the one day suspension**
12 and then the arbitrator disagrees with you and finds it
13 within policy?

14 A. It depends on what the arbitrator says. As I
15 have mentioned before on that actual discharge one, what
16 he said made no sense. Sometimes they'll say give him
17 back pay, plus interest. Sometimes it's just back pay.
18 Sometimes it's strike it from the record. It just
19 depends on whatever the arbitrator decides to order.
20 Sometimes they'll say give the officer their assignment
21 back. We had to take a sergeant back. They said, you
22 know, take him back. And sometimes other ones have
23 said, put him back into this assignment. All the
24 arbitrators seem to be doing their own thing.

25 **Q. Okay. So McClellan was use of deadly force,**

1 **right?**

2 A. Firearm.

3 **Q. And John Thomas was also a firearm?**

4 A. Yes.

5 **Q. How about Zachary Rosen, do you recall that**
6 **case?**

7 A. Which one, kick to the head?

8 **Q. Yes.**

9 A. I recall it.

10 **Q. What do you recall about that?**

11 A. It was long involved. Are you talking about
12 just the discipline?

13 **Q. He was accused of kicking somebody in the head,**
14 **right?**

15 A. Yes.

16 **Q. This was not considered a use of deadly force,**
17 **or is it considered a use of deadly force?**

18 A. No.

19 **Q. Okay. And what was your recommendation in terms**
20 **of discipline for him?**

21 A. I sustained the charge that he had violated the
22 rules and I recommended a three day suspension.

23 **Q. Okay. What happened with that suspension, do**
24 **you know?**

25 A. The director of public safety, who makes all

1 termination decisions, he recommended termination. It
2 went to arbitration, and the arbitrator gave him the
3 three day suspension that I had recommended.

4 **Q. I see. So this raises for me another issue. I**
5 guess I want to take a step back and ask you to walk me
6 through the entire disciplinary process, because I don't
7 totally understand how it went to the public safety
8 director. Let's just start with what are the different
9 channels of discipline within the division?

10 A. I'm not sure I understand what you mean.

11 **Q. Let's just specifically talk about deadly force.**
12 If an officer uses deadly force there is first a
13 criminal investigation, is that accurate?

14 A. If an officer uses their firearm then -- if they
15 use their firearm toward a suspect -- if they shoot at a
16 dog, that's generally investigated differently. If they
17 intend to harm a person, then the CIRT team comes out to
18 do a criminal investigation. The officer has all the
19 rights of a person being investigated for a criminal
20 offense. They're not required to make a statement, just
21 like criminal defendants are not required to. They do,
22 but they're not required to because it's a criminal
23 investigation. They participate in these investigations
24 because they believe they did the right thing and
25 they're going to try to explain why they used their

1 firearm.

2 A lot of people don't understand why we don't
3 order people to give a statement, but you can't in a
4 criminal investigation. So that investigation is
5 completed by the CIRT team. They don't make an
6 investigation one way or the other with regard to it
7 being in-policy or not. That investigation is up the
8 chain of command for the CIRT team. They have a
9 lieutenant, commander, and the deputy chief, and they
10 review and make sure that the investigation is a good
11 one. Make edits, if need be, for typing or
12 investigative questions or whatever. That investigation
13 is then completed and then sent to the officer's chain
14 of command. That officer's sergeant reviews the
15 investigation, and then by contract and by policy they
16 make a recommendation as to the finding on that
17 particular case. If they said I think that the officer
18 was within policy and didn't break the rules they're
19 going to say that. If they think the officer did
20 violate the policy, then they say, I think they violated
21 the policy, and they would be making a recommendation of
22 discipline.

23 **Q. Okay.**

24 A. It goes to that sergeant's lieutenant, same
25 thing, commander, deputy chief. If the deputy chief

1 feels that the officer should be found guilty of rule
2 violation, then they would bring that to my attention
3 and request either a written reprimand or a departmental
4 charge. If they did that and I agreed, then I would
5 then hold a chief's hearing so that the officer, their
6 representative, can come in and talk to me about that.
7 If I make a recommendation, and it's in the contract, if
8 I make a recommendation of a suspension it automatically
9 goes to the director of public safety's office. I could
10 make a recommendation of leave forfeiture up to 120
11 hours, and if the officer accepts that, then there is no
12 sending it off to the director's office. Anything above
13 120 hours automatically goes to the director's office as
14 well. That's the way it was when I was there. I don't
15 know if it's changed. If the chain of command said that
16 it was within policy and the deputy chief agreed it
17 would never come to me.

18 **Q. Okay. Did you as chief have any review of the**
19 **CIRT findings or recommendations?**

20 **A. CIRT doesn't make recommendations.**

21 **Q. Does the chief's office have any role in the**
22 **CIRT investigation whatsoever?**

23 **A. There's no protocol for the chief to participate**
24 **in the investigation, no. That's done by the CIRT team**
25 **and their chain of command to make sure that their**

1 investigation was done correctly.

2 **Q. At what point, if any, is the chief informed**
3 about the status or the ending of the CIRT
4 investigation?

5 A. It would be done by the deputy chief of the
6 officer. Sometimes if the package was one that was
7 gaining public attention or anybody else's attention,
8 then I would probably get regular updates about what was
9 going on with that investigation, where it stood,
10 whether it's gone to the Grand Jury if it did, and all
11 of those kind of things. I expected my deputy chiefs to
12 keep me updated on high profile cases or things along
13 those lines. Whether it's completed. Whether it's at
14 the Grand Jury. Whether it's been found by the Grand
15 Jury. What state it's in.

16 **Q. But if the chief doesn't weigh in on CIRT, like**
17 the criminal proceedings at all against an officer for
18 the use of deadly force, right?

19 A. Doesn't weigh in on the investigation, no.

20 **Q. Okay. The chief doesn't have a role in that**
21 criminal part of what occurs after an officer uses
22 deadly force?

23 A. Yes.

24 **Q. After that it goes to the policy and**
25 disciplinary determination portion of this, right?

1 A. After the investigation is completed by CIRT in
2 their chain of command review, yes. Then it goes to the
3 officer's chain of command, if it's an officer,
4 commander, lieutenant, deputy chief to be reviewed.

5 **Q. Where does FRB come in?**

6 A. They come in when the investigation is finished.
7 I forgot about them.

8 **Q. There's a lot of parts of this.**

9 A. There's a lot of checks and balances. I was on
10 the Firearms Review Board for about 14 years or 10 years
11 or so. The investigation is completed by CIRT and their
12 chain of command, and then it goes to the Firearms
13 Review Board. There's three commanders that the
14 investigation is sent to, and they individually read
15 that, and then they make a recommendation of policy in
16 or out, and then that goes to the chain of command.
17 Sorry. I skipped that step.

18 **Q. Okay. Now, my understanding then is if the**
19 **Firearms Review Board makes a recommendation and the**
20 **chain of command agrees with the Firearms Review Board**
21 **it doesn't make it to you, right?**

22 A. That's in the case of it being within policy.
23 All of them might recommend that it's outside of policy
24 and it would come to me.

25 **Q. If the Firearms Review Board saying it's**

1 **in-policy and the chain of command agree it's in-policy,**
2 it never makes it to the chief, right?

3 A. It wouldn't come to me for action. I would
4 probably hear about it, but it wouldn't come to me for
5 action.

6 **Q. In that case that the Firearms Review Board and**
7 chain of command both agree that a use of deadly force
8 was within policy, who is the final decision-maker
9 regarding that decision that it is in-policy?

10 A. The deputy chief.

11 **Q. The deputy chief of the officer's chain of**
12 command?

13 A. Yes.

14 **Q. Okay. And then in the case that the Firearms**
15 Review Board and the chain of command agree that it was
16 out-of-policy, the use of deadly force was
17 out-of-policy, what happens next?

18 A. The chain of command makes a disciplinary
19 recommendation, and basically if it's an outside of
20 policy use of deadly force, I said it should come to me.
21 You can't just give a DCC for something like that. They
22 could technically by policy give a DCC and never tell me
23 about it, but I made it a policy of mine and let my
24 deputy chiefs know that I expected to see outside of
25 policy uses for deadly force.

1 **Q. How did you communicate that policy that you**
2 made for your deputy chiefs?

3 A. I'm sure I talked about it, but I might have
4 written it down on the expectations that I had for
5 deputy chiefs. I just don't remember if it was written
6 down or not. We discussed it that you don't get a DCC
7 for firing your weapon. Now, I'll be clear that if it
8 was an accidental discharge that's sometimes going to be
9 decided by the deputy chief as a DCC. They've taken all
10 the precautions, used the equipment at the substation to
11 try to prevent that. Then there had been some DCCs that
12 were decided upon by the deputy chief without it
13 necessarily coming to my attention. I'm talking about
14 shooting at suspects.

15 **Q. Intentional discharges at people?**

16 A. Yes.

17 **Q. Okay. So as far as you know during the time**
18 that you were chief were there any DCCs given for use of
19 deadly force?

20 A. Towards a suspect?

21 **Q. Yes.**

22 A. Not that I recall, no.

23 **Q. And before you were a chief you don't know,**
24 right?

25 A. Not if they were found outside of policy, not to

1 my knowledge.

2 **Q. I'm sorry. Is that that you don't know whether**
3 it happened?

4 A. I don't recall anybody getting a DCC for
5 shooting at someone and being outside of policy.

6 **Q. Okay. Thank you for the clarification. So**
7 every use of deadly force where the chain of command
8 recommended discipline during the time that you were a
9 chief went to you for a hearing, right?

10 A. The ones that were intentional and at a suspect,
11 yes.

12 **Q. I'm only going to ask you for intention and at a**
13 suspect for now. Is there ever a time that it went to
14 you and you did not have a hearing?

15 A. Where they said it was outside of policy and I
16 decided not to have a hearing, not that I recall. They
17 have had cases where they said it was outside of policy
18 and I had a hearing and made a different decision, but
19 no. I don't recall any where I didn't have a hearing.
20 There might have been a written reprimand involved, but
21 I can't remember which one that would have been.
22 Generally I wanted to have a face-to-face with the
23 officer.

24 **Q. Why?**

25 A. That's the most critical thing an officer can

1 do, right? If our chain of command or the Firearms
2 Review Board felt that the officer had violated our
3 policy on that, I believe it's extremely important for
4 me to understand what was going on in the officer's
5 mind.

6 **Q. Then in the case where you made a determination**
7 **after a hearing that an officer's use of deadly force**
8 **was intentional and at a suspect was outside of policy**
9 **and your disciplinary finding was less than 120 hours of**
10 **a suspension there's no oversight of that decision,**
11 **right? If that's accepted, then you're the final**
12 **decision-maker regarding discipline, right?**

13 A. I mean, I don't think that there's any formal
14 oversight other than I worked for the director of public
15 safety, and if he wanted to question me about a
16 particular decision he could, he could do that. I took
17 plenty of criticism from the public or attorneys or
18 whoever else that the decisions that I made were not
19 acceptable to them.

20 **Q. Sure. But they don't have any actual oversight**
21 **of you?**

22 A. No. I worked for the public, so did it impact
23 my work terms? Probably not, but it certainly impacted.

24 **Q. The public didn't have the ability to change**
25 **your disciplinary recommendation or your disciplinary**

1 finding?

2 A. Correct.

3 **Q. The only person over you would have been the**
4 public safety director?

5 A. I don't know that he would have if it never got
6 to him. He could do something to me, I suppose, but I
7 don't know that he could overturn the disciplinary
8 decision that I made if it didn't come to him.

9 **Q. Okay.**

10 A. I think that would be something that would be
11 subject to interruption by the contract and all of that
12 because the contract is what lays out where these kinds
13 of decisions get made, and the directives also lay out
14 the process.

15 **Q. Okay. I just want to make sure that I**
16 understand. When would your disciplinary finding -- you
17 make a finding, right?

18 A. I make a finding, and depending on the
19 discipline, I make a decision on the discipline or take
20 it to the director's office.

21 **Q. And it only goes to the director's office if**
22 your recommendation for a suspension was over 120 hours
23 or termination, right?

24 A. No. Any suspension goes to the director of
25 public safety, even if it's just up to one day. If it's

1 leave forfeiture up to 120 hours then we didn't have to
2 go over there.

3 **Q. If you found that an officer should be suspended**
4 because their actions were outside of policy but you
5 offered that officer 120 hours of leave forfeiture and
6 they accepted, then that's it. There's no -- the
7 director of public safety wouldn't review your
8 disciplinary finding in that case, right?

9 A. Generally, yes. Unless they specifically ask
10 for something or something along there.

11 **Q. You're the final policy-maker and decision-maker**
12 in that circumstance?

13 A. I'm the final decision-maker if they accept a
14 leave forfeiture of under 120 hours, yes. Ultimately
15 though, some of those decisions have been taken to
16 arbitration.

17 **Q. I understand. That's a whole other part of**
18 this. That's outside of the division, the arbitration
19 process?

20 A. It's outside of the division, but it's in the
21 contract.

22 **Q. I understand. So within the division the buck**
23 stops with you if leave forfeiture of up to 120 hours is
24 accepted, and then it only goes above you to the
25 director if it's a termination, a suspension over 120

1 hours or if there's no leave forfeiture, right?

2 A. Any suspension goes to the director. It's leave
3 forfeiture over 120 hours.

4 **Q. You're right. I have to get that right. It**
5 only goes above you to the public safety director if
6 it's a termination or a suspension and there's no leave
7 forfeiture accepted?

8 A. Correct. Leave forfeiture over 120.

9 **Q. Can the public safety director give leave**
10 forfeiture over 120 hours?

11 A. I think the director can do what they want to
12 do. I don't know what the contract says about that, but
13 the director is not bound by as many of those things as
14 the chief is.

15 **Q. In the time that you were chief, how many times**
16 was an officer found ultimately to have used deadly
17 force outside of policy?

18 A. By me or by the director?

19 **Q. Whoever the final decision-maker was for that**
20 level of discipline.

21 A. Well, Camp-Donovan.

22 **Q. I don't want to focus on the arbitration at this**
23 point. Even if it was later overturned, I want to know
24 how many times the division at whatever level ultimately
25 determined that the officer should be disciplined

1 because of an outside of policy use of deadly force?

2 A. Those three at least, McClellan, Thomas,
3 Camp-Donovan. I don't recall any others, but my memory
4 is limited to, you know, what I remember right now,
5 because I don't have records in front of me. That's all
6 I recall.

7 **Q. Okay. And what would be -- just to make sure**
8 that I'm not missing anything, where is the best place
9 for us to look to get the answer to that question?

10 A. I believe that disciplinary tracking system
11 that's kept by the professional standards discipline
12 grievance review on the intranet.

13 **Q. Okay. Had you requested access to that before**
14 this deposition would you have been able to get access
15 to those documents and review them?

16 A. Well, yeah. I don't know if the city attorney's
17 office would have gotten them or if I would have had to
18 go through public records, but yeah. Like I said, my
19 last six weeks has been crazy.

20 **Q. I get that.**

21 A. I thought it was about these three cases.

22 **Q. I understand. Part of this deposition is about**
23 us also trying to figure out how we could get the
24 information. For whatever reason outside of your
25 control, you have not brought all of the information

1 that we've requested to the deposition. So that's why
2 I'm trying to ask where we could get that and what
3 documents we should be looking for so we could access
4 all of the information?

5 A. I believe in transparency, so I like that we
6 live in Ohio and records are available. We keep those
7 kinds of records so people can see that we're not hiding
8 anything.

9 **Q. So how do you reconcile that belief, which I**
10 agree with, with these limitations put upon the division
11 by the FOP contract that require records to be erased or
12 names to be removed?

13 A. You know, I mean, there's different things
14 across the country as far as police officers, equal
15 rights, access to records. I mean, we live in a state
16 where, you know, officers' information is publicly
17 available. In California they shield all officers'
18 names from any disciplinary record. We're far further
19 ahead in transparency than California is, which is
20 weird. There's other states where there's no Union and
21 you could be fired for looking at the chief the wrong
22 way. It's a matter of fairness. I don't decide. I'm
23 not the negotiator or the Mayor I don't sign off on
24 contracts. I just do what's in them. I wanted to make
25 sure that we have good officers and all of that, but

1 something that happened, and this is a case not related
2 to use of force, but an officer who I believed committed
3 theft that should have been fired, I recommended
4 termination. He was terminated. Got his job back
5 because the arbitrator said, "yes, he did one bad thing
6 in 24 years and so, give him his job back." He had
7 stolen.

8 So there's a whole bunch of different opinions
9 about how long people are held accountable for past
10 actions, whether or not that actually impacts their
11 ability to do their job well. We've had officers that
12 have made major mistakes who have gone on to never make
13 another mistake and had great careers saving lives.
14 Putting dangerous people in jail. I just live within
15 the rules. You have to accept that this is the way that
16 it is. Do you like it all the time, no. But you have
17 to decide how you work within those rules to give the
18 public the very best that you can. Like I said,
19 discipline isn't always the thing that changes behavior.
20 Sometimes it's counseling. Sometimes it's
21 encouragement. Sometimes it's training. Putting people
22 in jail doesn't also correct their behavior. It's
23 really about trying to understand how we can produce the
24 best officers the best way that we can, whether that's
25 through discipline training, counseling, however it

1 might be, and living within the constraints of all of
2 that.

3 I could give you two or three different
4 discipline cases, give you the whole investigation and
5 all six of us, or whoever is on this call, could come up
6 with six different answers to that. You have to have a
7 system in place that you believe is doing the right
8 thing for everyone and being consistent and taking all
9 the facts into consideration, because an incident of
10 misconduct, some people would say they should be fired,
11 and some may say they should be complimented. It's just
12 doing the very best that you can to make sure that
13 officers are doing the right things, and the public is
14 protected from the mistakes that they might make.

15 **Q. Is there ever a time where the division has**
16 recommended discipline and that has been overturned by
17 an arbitrator wherein the division has made some changes
18 or some retraining or taken any action whatsoever to
19 correct the misconduct or the impact of that misconduct
20 on other officers and on the public?

21 A. Yes. I mean, if an arbitrator gave us somebody
22 back then, depending on what the ruling was and what
23 they ordered to happen, that officer might have been
24 monitored more or might have been sent out to the
25 academy for different classes. All sorts of different

1 things have happened, but it's not one set thing. It's
2 based on what the arbitrator ordered us to do and what
3 we're allowed to do.

4 **Q. Okay. So for McClellan, did the division take**
5 **any action to address the misconduct?**

6 A. I'm 99 percent sure that we had him go out to
7 the academy to go through shoot, don't shoot situation.

8 **Q. How about for other people who within the**
9 **division, like did the situation with McClellan alert**
10 **the decision to any kind of deficiency in training or**
11 **supervision or discipline that could be corrected or**
12 **addressed in any way?**

13 A. No. It was one of those situations where some
14 people say it's good and some people say it's borderline
15 or not. So there was no reason to assume that every
16 single cop needed to be trained on how to deal with that
17 particular situation because chances are that -- you
18 know, when you're using deadly force you're judged by
19 the facts at that moment and it was related to his
20 decision-making at that time. There's not a plethora of
21 other cases where other people were, you know, having
22 people jump out at him out a shed.

23 **Q. Okay. In the time that you were chief, what**
24 **percentage of uses of deadly force made it to your level**
25 **for a disciplinary finding?**

1 A. Well, I gave you those several. What percentage
2 are you talking about, of what?

3 **Q. Of all the uses of deadly force.**

4 A. Well, there was an average of 15 maybe for that
5 period of time a year, so I would say less than 10
6 percent. It might be less than five percent, I just
7 don't have the numbers.

8 **Q. And of those how many did you disagree with the**
9 **recommendation for discipline?**

10 A. The finding?

11 **Q. The chain of command makes a finding and then**
12 **the recommendation for discipline, right?**

13 A. If they make a finding of outside of policy.
14 Everybody makes a recommendation of finding. If the
15 findings is sustained, they make the recommendation for
16 discipline.

17 **Q. Thank you. The vocabulary around this, I'm**
18 **trying to get right. It's a lot. I'm going to get it**
19 **eventually. Thank you for being patient with me. In**
20 **your time as chief, which is all you can testify to, how**
21 **many times did a case come to you, a use of deadly force**
22 **intentional at a suspect come to you with a finding from**
23 **the chain of command that it was outside of policy, and**
24 **then you disagreed with that and found it to be within**
25 **policy?**

1 A. I know of at least two case, the England case
2 and then another case that involved an officer. I don't
3 remember the subject's name, but Chase Rodgers, I
4 believe, was his name. A fairly new officer, and it
5 happened outside of a big box store. Maybe a K-Mart.
6 The chain of command, I believe most, if not all, might
7 have been one of those mixed things found that it was
8 outside of policy and after a chief's hearing I found it
9 to be within policy.

10 **Q. You think that officer's name was Chase Rodgers**
11 **you said?**

12 A. Yes.

13 **Q. Do you know what year that was?**

14 A. It was pretty early on. 2012, or '13.

15 **Q. Why did you disagree with the chain of command**
16 **finding and decide that Chase Rodgers' actions were**
17 **actually within policy?**

18 A. Based on the information that he provided in the
19 chief's hearing. All of us that review these things are
20 sitting at our desks.

21 **Q. Right.**

22 A. And hearing from the person that was there that
23 moment face-to-face having them be able to describe it
24 is important to understanding the dynamics of the
25 situation. So the investigations is extremely important

1 to be able to put things together in time and distances,
2 but hearing the officer explain the circumstances I
3 believe is also important, because sometimes the
4 investigators don't grasp all of that or can't write it
5 all down.

6 The Supreme Court said judge their actions based
7 on what a reasonable officer would do, and understand
8 that the situation they're in is different than the one
9 that I'm in sitting at my desk. So based on what that
10 officer said, I understood the fear of harm he was
11 experiencing and the situation better. I wouldn't have
12 had that meeting if I didn't have questions about it and
13 feel that he might have violated the policy, but based
14 on the information either provided by the officer and/or
15 the representative I changed my mind and decided not to
16 discipline him.

17 **Q. Do you recall any specific pieces of information**
18 **that led you to change your mind?**

19 A. It was about the positioning and where the
20 bullets landed. He fired at somebody in a car. The car
21 was moving. He was concerned about being run over and
22 his foot had already been run over once, so he was
23 concerned about the car turning into him and either
24 knocking him down or whatever. And if you understand
25 enough about reaction time you know that the decision to

1 shoot sometimes in that split second, things can change.
2 If the car is moving and you're moving and all of that
3 kind of stuff, the circumstances are such that your
4 reaction time is not always caught up with what's going
5 on with your trigger pull or something else. I've done
6 a lot of studying on reaction time and a lot of
7 information like that.

8 **Q. Was that information about positioning something**
9 that had not been included in the officer's previous
10 statements that were considered by the chain of command?

11 A. Whatever was included in that particular
12 investigation that was recorded, yes. The officer has
13 an opportunity to make a statement. They almost always
14 do, even though it's a criminal investigation. It's
15 written down by somebody else, created by somebody else,
16 and sometimes they get it all right and sometimes they
17 don't get it as in-depth perhaps as the officer felt or
18 was able to explain at the time.

19 **Q. Okay. So for Chase Rodgers, it was information**
20 that he or his attorney told you regarding positioning
21 that changed your mind?

22 A. The positioning of himself, the car, the
23 movement, the timing, all that kind of thing.

24 **Q. Did you consider any other factor in**
25 recommending a within policy, or finding him to be

1 within policy?

2 A. Not that I recall.

3 **Q. Okay. And so, in that case because you**
4 determined it was within policy you were the final
5 decision-maker?

6 A. Correct.

7 **Q. No one above you reviewed your decision?**

8 A. Correct.

9 **Q. Okay. And then the other case that you could**
10 think of where you overturned a finding, a disciplinary
11 finding, was in the England case?

12 A. Yes.

13 **Q. You can't think of any other times where you did**
14 that?

15 A. Not right offhand, no. Not for the use of
16 firearm.

17 **Q. And that's all I'm asking about. Again, to find**
18 any other times that you overturned a disciplinary
19 finding the best place to look would be in that
20 disciplinary tracking system?

21 A. That tracking system should have those cases
22 that came to my attention, yes. Recommendations for
23 departmental charges or written reprimands, it would be
24 in that database. If the chain a command recommended
25 charges, I may have recommended a written reprimand

1 afterwards, after the hearing. I'm sure I did that too.

2 **Q. Wait. So basically you found discipline, but in**
3 a lower level than the chain of command?

4 A. They just recommend charges. They don't make a
5 recommendation about how long a suspension or anything
6 like that could be. They just say, I recommend that
7 they have departmental charges.

8 **Q. Okay.**

9 A. I could recommend suspension, leave forfeiture,
10 written reprimand, or throw it out.

11 MS. GELSOMINO: Let's go off the
12 record for a second.

13 - - - -

14 (Thereupon, an off-the-record discussion was held.)

15 - - - -

16 MS. GELSOMINO: So back on the record.
17 BY MS. GELSOMINO:

18 **Q. I'm sharing my screen with you. Do you see a**
19 document with CPD sworn 10.10 on top of it?

20 A. Yes.

21 **Q. This is a 12 page document. I can scan through**
22 it, if you want. Do you know what this is?

23 A. I think it was at least our first attempt at
24 trying to create the list that had been okayed by the
25 negotiation in the new contract terms.

1 **Q. Informally referred to as the liars list?**

2 A. Or the 10.10 list. Yes.

3 **Q. Does that relate to the --**

4 A. The chapter and section in the FOP contract.

5 **Q. Okay. You believe this was your first attempt**
6 at it?

7 A. The redaction -- we created a list, my
8 administrative sergeant aid in my office tried to come
9 up with the names that would belong on such a list, and
10 we did basically a whole investigation as to whether or
11 not they could be included or not. We had asked people
12 for -- again, a lot of those records had already been
13 destroyed or whatever, so we tried to come up with a
14 list of people that would qualify beyond that 10.10
15 list, and if the circumstances were such that the
16 untruthfulness was the sustained charge. We came up
17 with a lot of names. And then between our investigation
18 and FOP objections, I think this list got whittled down
19 significantly.

20 **Q. Does it still look the same?**

21 A. I don't really know what it looks like right
22 now.

23 **Q. How about when you left your term as the chief,**
24 did it have the same appearance?

25 A. It would have been a variation of this probably.

1 This isn't the neatest way to do it.

2 **Q. So on this list, do you know a date on this list**
3 approximately?

4 A. It says, "November 29th, 2012."

5 **Q. Do you think that's when it was created?**

6 A. That's when it was printed. It wouldn't have
7 been created in one-day, maybe days or weeks to put
8 together.

9 **Q. So approximately November of 2012 this was**
10 created?

11 A. Yeah.

12 **Q. Okay. And you said this is only sustained**
13 findings of untruthfulness?

14 A. That's what would be allowed to be on the list.

15 **Q. Okay. How was it then later whittled down?**

16 A. Some of the paperwork that we were able to track
17 down ended up showing that perhaps at the director's
18 office the charge was changed from untruthfulness to
19 unbecoming conduct. If that's what was ultimately
20 sustained, then that person's name would have been
21 removed from the list. I think that happened maybe with
22 a few people. Some people might have appealed. We let
23 people know that we were planning to put them on this
24 list, and did they have any different information. You
25 know, it might have come from an arbitration decision

1 that we weren't able to access or something along those
2 lines. The list changed based on the information that
3 we continued to gather. I'm not sure if the FOP filed a
4 grievance about it. And it seems to me that a decision
5 was made, and I don't know by who, the director of
6 public safety or someone else, that we weren't going to
7 do this retroactively, that we'd do it moving forward,
8 because much like you can't be charged with a crime for
9 something that wasn't a crime when you did it.

10 **Q. Right. Okay. Why is this list important?**

11 A. Well, for a number of reasons. If we have an
12 officer that was found to be untruthful once, there's a
13 possibility they might lie in the future. Much like I
14 said, the Charlotte Mecklenburg investigation of their
15 early warning system indicated that if you've done it
16 once you might do it again. Untruthfulness is one of
17 the most egregious violations of our rules. It's almost
18 an automatic termination recommendation because of the
19 seriousness of that. We need to be able to trust an
20 officer's testimony. And if we can't trust that
21 testimony with ourselves, we can't necessarily trust it
22 on the stand. I believe that's the whole Grady aspect
23 of this. We want to know who has done this most
24 egregious violation and, you know, if we've got officers
25 that have never done anything wrong, have a great

1 record, all of that, then is there something that counts
2 towards their good behavior as opposed to somebody with
3 this type of bad behavior being impacted for assignments
4 and various other things. It's one of the more
5 egregious violations we have.

6 **Q. How was this list used by the division while you**
7 **were chief?**

8 A. It didn't come up very often at all. The
9 contract terminology spells out how it can be used and
10 it can be used for certain assignments. It can be used
11 for I think -- I don't even know if it could be used for
12 progressive discipline or not. It's spelled out in the
13 contract. I would rather refer to the contract than try
14 to recall what it says.

15 **Q. That's fair. Now, on this list -- I just moved**
16 **to page two. The third name down the line is Lieutenant**
17 **Robert Meader. He's on this list, I believe, more than**
18 **once. Do you know why he was on this list?**

19 A. Well, back in 2005. I think that's 2005
20 09-0086. The first four digits are the year of the
21 allegation. So, back in 2005 there was an investigation
22 of him and another sergeant, I believe at the time, and
23 he had, I believe, a sustained charge of untruthfulness
24 at the time.

25 **Q. Do you know what his actions were that were**

1 **deemed by the division to be untruthful?**

2 A. Both Meader and the sergeant were, I think they
3 were both attorneys and had prepared information about
4 like a promotional exam, a multiple choice question prep
5 for people, and I don't know if they were giving it away
6 for free or charging people for this prep, but at some
7 point in time somebody complained because of the names
8 being used in the examination were either real names or
9 very close names to actual division personnel. And I
10 think some people took offense with that, made a
11 complaint, the investigation happened, and based on
12 their responses to the investigation the charge of
13 untruthfulness came out.

14 **Q. Okay. And did this charge of untruthfulness**
15 **impact any of your disciplinary or supervisory decisions**
16 **of him in any way or promotion within the division?**

17 A. The chief's role in promotions is extremely
18 minor. We don't have oral boards anymore, so it's a
19 director decision, and the director may or may not ask
20 me for my recommendation. I had three different
21 directors while I was there, and I would say there's no
22 consistent involvement of me in the promotional process.
23 I don't recall that charge impacting my ability to
24 supervise now Commander Meader. It happened. I can't
25 remember what discipline he got out of it even. It was

1 before my time. I probably was assigned to patrol
2 during that time and wouldn't have had a lot of
3 connection to it.

4 **Q. Okay. So the fact that one of your command**
5 **staff was charged with and apparently determined to have**
6 **been untruthful within his job didn't impact your**
7 **working relationship with him whatsoever?**

8 A. No. I don't think it impacted my ability to
9 effectively deal with him. And you said the
10 investigation happened internally, but it was really
11 about more off duty conduct.

12 **Q. I believe you said that most untruthfulness**
13 **findings result in a recommendation of termination. Is**
14 **that your testimony?**

15 A. That's what I said. Yes.

16 **Q. Why is that?**

17 A. As I said before, it's one of the most egregious
18 violations of rules. We need to be able to trust an
19 officer's words. If a COE -- say the president of Ohio
20 State University runs a red light and an officer that's
21 been an officer for six months writes him a ticket for
22 running a red light, it's the president of Ohio State
23 University saying, no, I didn't, and a six month officer
24 saying, yes, they did. You have to be able to trust
25 their testimony and know that they're telling the truth.

1 It's extremely important. If they write a report we
2 need to know that the report is written down accurately.
3 If they say that they saw a weapon on somebody, they
4 need to be believed that they saw a weapon on somebody.
5 That they're not planting evidence. That if they turned
6 all the property in, that they turned all the property
7 in that they recovered other than some of it. It's
8 critical.

9 **Q. Has the division ever found an officer to have**
10 **acted outside of policy for planting evidence?**

11 A. My history is only 39 years.

12 **Q. In 39 has that happened?**

13 A. Planting evidence, not to my knowledge. I
14 remember that one, I believe a sergeant, I think he was
15 an officer at the time, may have given a false statement
16 about what had happened, but I don't believe I've ever
17 heard of planting evidence as an allegation against
18 somebody. I mean, I'm sure that we've had defendants in
19 criminal cases say that wasn't mine or it was planted,
20 but not to my knowledge have we had an investigation
21 sustained for that.

22 **Q. Okay. Has the division ever processed or found**
23 **untruthfulness in the context of use of force**
24 **allegations?**

25 A. Yes.

1 **Q. How many times?**

2 A. I don't know. One case is standing out.
3 Officer Baldwin was involved in a pursuit, and the
4 suspect ultimately crashed into Officer Baldwin's car, I
5 believe. Either crashed into the back of it or at least
6 butted up against that I think it was a pickup truck.
7 Officer Baldwin got out of the driver's side, but
8 because his car was touching the pickup truck he ran up
9 to the driver's door, but the driver had already been
10 pulled out of the other side from an officer on the
11 other side. So the officers on the other side came
12 around, pulled him out, put him on the ground, Officer
13 Baldwin came up around the front of the pickup truck,
14 came around to the group and at some point in time he
15 kicked this particular suspect, maybe in the head. I'm
16 not sure where, but the suspect was already on the
17 ground under control and it was outside of policy. When
18 the sergeant came up to the particular situation he did
19 an investigation, he did not report that use of force.
20 So the sergeant wrote that up, but because it was a
21 pursuit it was individually investigated by a lieutenant
22 who then reviewed the video and somehow heard, saw in a
23 pretty bad video this kick, and then an investigation
24 pursued, and the officer then said that he had filed a
25 report and left it on the sergeant's desk about the kick

1 and didn't believe him. He was departmentally charged,
2 he was scheduled for a hearing and all of this. The
3 FOP, his representatives, everybody said he left the
4 report on the desk, and my hearing was delayed by ten
5 minutes when the FOP came in and said we need a few
6 minutes. They came in, the officer sat down and said I
7 lied. I recommended termination and he was fired.
8 Another officer used I think either a flashlight or
9 baton on somebody and didn't report it right away.
10 Within an hour or two he came back to the substation and
11 told the supervisor about it. He was charged with
12 untruthfulness.

13 **Q. Was there any discipline for him?**

14 A. I recommended termination, but the director
15 allowed him to keep his job.

16 **Q. Did he have discipline?**

17 A. Absolutely. He got a suspension, but he did not
18 get terminated.

19 **Q. Was there any kind of retraining or counseling**
20 **or anything that went along with that?**

21 A. I'm sure there was.

22 **Q. Was there any tracking of that officer's future**
23 **conduct to ensure that he didn't use unnecessary force**
24 **again or lie about it?**

25 A. I'm absolutely positive that the chain of

1 command was paying close attention to that particular
2 officer. He happened to be devastated by what he had
3 done, and actually a very religious person, and he was
4 far more upset with him than anybody could have been and
5 he's gone on to be a very stellar employee. I know that
6 I was checking up on him, and I know that his chain of
7 command was.

8 **Q. That first officer, I think you said that it was**
9 Baldwin, who admitted to lying late in the
10 investigation, was he actually terminated?

11 A. Yes.

12 **Q. Did the arbitrator uphold that finding?**

13 A. I can't remember if he went to an arbitrator or
14 civil service commission. I remember it was appealed, I
15 just can't remember what body. I'm thinking it was
16 probably an arbitrator, but I do believe that that
17 termination held.

18 **Q. It held?**

19 A. Yes.

20 **Q. I'm going to ask you some questions now about**
21 the shooting of James England. That's the case that
22 involved Officer Abel. When were you first alerted to
23 Abel's use of deadly force in this context?

24 A. I assume the day that it occurred. I asked to
25 be notified of all police involved shootings, and I

1 tried very hard, I probably got out to about 90 percent
2 of them personally during my tenure as chief.

3 **Q. Did you actually go to the scene of the shooting**
4 of James England?

5 A. I don't think I went to that one.

6 **Q. Okay. So when you were first notified what were**
7 you told?

8 A. Actually, I'm pretty sure I didn't go to that
9 one. I would have been told what the circumstances
10 were. We talked before about my involvement in
11 investigations and I tried not to be involved because I
12 might have to make a decision later on about that. I
13 wanted fresh eyes and all of that. Basically when I
14 went out to the scene I ensured that the CIRT team was
15 there, that they had the resources they need to get the
16 job done, do the investigation, make sure that the
17 officer was being taken care of with regard to support
18 team, any resources that they needed like an attorney or
19 anything like that. The FOP usually took care of that,
20 but just to make sure that the officer was doing okay.
21 The division has a policy that if you are involved in a
22 situation like that that you have to see a psychologist
23 before you're able to come back to work.

24 **Q. Okay. So specifically for the case when Officer**
25 Abel shot James England you were notified, and then what

1 was your first involvement actually in the review of
2 this use of force?

3 A. I don't remember any involvement until the chain
4 of command had made their recommendation. Firearms
5 Review Board, I might have gotten a heads-up that they
6 said it was outside of policy, just like maybe in an
7 executive staff meeting or something, but I don't
8 remember any real involvement until it came to me for a
9 decision on whether or not we should file departmental
10 charges.

11 **Q. Okay. How did it come to you?**

12 A. It would have been brought to the executive
13 staff after -- the deputy chiefs I asked them to take --
14 when they thought there was going to be departmental
15 charges or a written reprimand, I asked them to run the
16 investigations by the Professional Standards Bureau
17 discipline grievance lieutenants that I mentioned
18 before, because they're basically the prosecutors in the
19 division for misconduct.

20 **Q. Okay.**

21 A. So I asked them to review the case for due
22 process, just cause, all of that. Fortunately a lot of
23 the people that take that job are attorneys, so they
24 understand that process very well with regard to
25 disciplinary cases. That's their job is to present

1 discipline cases. So while we think they're guilty, did
2 we follow all the contractual rules? Do we have just
3 cause? Did we do the process? Is this a thorough
4 investigation? What's the precedent for the discipline
5 on this? So they prepped and gave the information to
6 the deputy chief, and then the deputy chief would come
7 in and tell me they're recommending departmental
8 charges, and even though that was the process that I had
9 asked to be implemented. There might have been a couple
10 of times where things came to be before it went to PSB,
11 but they always got the case sooner or later.

12 **Q. Like what actual documentation comes to you,**
13 specifically in James England, what documentation did
14 you receive?

15 A. The deputy chief would have briefed me on the
16 incident and depending on how clear the evidence was
17 they would either give me the entire package or I would
18 just go ahead and follow through with departmental
19 charges being filed based on the information provided by
20 them, lieutenants in the discipline office, and then I
21 would have my chief's hearing. Often times I wouldn't
22 read the entire investigation before then. I would have
23 the charges filed and then read it closer to the actual
24 hearing, because often times those were at least 30 days
25 away or more, and depending on the size of the

1 investigation I may not have time to read it that
2 particular day.

3 **Q. In this case with James England how did that**
4 **happen?**

5 A. I don't know.

6 **Q. Okay.**

7 A. The routing sheet would be indicative of how
8 quickly that turned over, but I don't have that routing
9 sheet for some reason.

10 **Q. I have it. I'll show it to you in a little bit.**

11 What did you do between the time that you received
12 notification of the FRB and the chain of command's
13 findings? Between that point and the point of your
14 hearing, what did you do in relation to this case?

15 A. I would have read the investigation and the
16 chain of command comments.

17 **Q. Okay. What specifically did you read in the**
18 **investigation?**

19 A. Well, we typically read all of the statements.
20 I didn't necessarily look at the property slip and the
21 diagrams if it wasn't relevant. In this case it was,
22 but I would look at photos. Most of the information in
23 the case, unless there was something that isn't relevant
24 at all. Some cases have lots of paperwork that might be
25 phone records for somebody that is 100 pages of phone

1 records, I wouldn't have read all of those unless it was
2 relevant to the case.

3 **Q. Did you review any memos from anyone within the**
4 chain of command relating to their findings before the
5 hearing?

6 A. That's what I mentioned before. I would have
7 read their chain of command comments.

8 **Q. Okay. Did you review Lieutenant Knight's memo?**

9 A. I don't have a specific memory of that, but I
10 would assume, yes.

11 **Q. Would you have reviewed Griffis' memory?**

12 A. I'm sure I did.

13 **Q. Why did you have a hearing?**

14 A. Because having heard about it from the deputy
15 chief and the chain of command comments I had a belief
16 that it might have been outside of policy, so I charged
17 him that way.

18 **Q. What led you to believe that it might be**
19 out-of-policy?

20 A. The fact that there was a lot of information
21 that said that this subject was handcuffed.

22 **Q. Okay. Anything else aside from the handcuffing?**

23 A. It was just weird. It was a very strange
24 circumstance. It was hard to imagine the officer
25 dangling on the door and the danger that they're in on

1 one side of the door, and the suspect and the dogs on
2 the other side of the door. Was it secure or not? So
3 just based on the information that I had, I felt like
4 this doesn't sound right.

5 **Q. Okay. Where does the hearing happen?**

6 A. My office.

7 **Q. And who's present?**

8 A. You have the list probably.

9 **Q. Generally.**

10 A. Generally it's the officer, a representative
11 from the FOP. At times they bring an attorney, then I
12 asked chain of command to come in as well, at least the
13 deputy chief, the commander, and sometimes the
14 lieutenant into the hearings. That wasn't for all seven
15 years, but as I grew into my job I decided that that was
16 a good way to mentor and training the chain of command,
17 having them actually hear all of this information and
18 see the process so they have a better understanding of
19 it. I would invite them in to hear the case. And then,
20 of course, the PSB, discipline grievance lieutenants
21 would be there. Sometimes one, sometimes two.
22 Sometimes the commander of professional standards, and
23 then somebody from Internal Affairs who is kind of like
24 the person to do the recording, and if they were the
25 investigator answer questions if I have them.

1 **Q. How was it recorded?**

2 A. A little audio recorder.

3 **Q. Were those audio recordings preserved?**

4 A. I know they're preserved with the investigative
5 package. I don't know what the record retention
6 schedule is on those. If there's a sustained finding it
7 might be different. That's the chief's hearing. The
8 criminal investigation would probably be kept on hand
9 all the time.

10 **Q. I'm going to show you a document here that was**
11 previously marked in another deposition as Abel Exhibit
12 9.

13 - - - -

14 (Thereupon, Abel Exhibit 9 was shown.)

15 - - - -

16 BY MS. GELSOMINO:

17 **Q. This is an intra-divisional memo to you from**
18 Lieutenant Knight related to the FRB regarding his
19 recommendations, I guess. I made this a little smaller.
20 If you need it bigger, let me know?

21 A. It's fine.

22 **Q. What is it?**

23 A. That would be the chain of command comments.
24 Sometimes if they're very brief they would write it on a
25 form called a routing sheet, and often times when they

1 have more to say than within policy, or whatever, they
2 are expected to write down their rational or
3 recommendation of finding.

4 **Q. Okay. And you had this before the hearing,**
5 **right?**

6 A. Yes.

7 **Q. Did you review it?**

8 A. I would have to say that most probably, yes. I
9 wouldn't have read just one and not read all of them.

10 **Q. Okay. So looking on page two here, Knight**
11 **states that it was his belief that Abel's use of force**
12 **was not objectively reasonable and was intentional and**
13 **in violation of policy, right?**

14 A. Correct.

15 **Q. And he recommended bypassing progressive**
16 **discipline, right?**

17 A. Yes.

18 **Q. What does that mean?**

19 A. Well, a charge such as using deadly force, much
20 as I described earlier, would not be something that I
21 would want to see result in a counseling session or a
22 documented constructive counseling. It's serious. You
23 used your firearm, we think it's a violation, so
24 therefore, I wanted the opportunity to weigh in on that
25 without the chain of command issuing discipline and

1 being done with that.

2 I had a situation along those lines with an
3 officer who had an OVI, and the chain of command ruled
4 on it and didn't tell me about it. It was his second
5 OVI, and when I found out that it was sent to IA without
6 my knowledge I had it reopened at a hearing and
7 recommended termination. In that particular case the
8 deputy chief didn't tell me about it and made the
9 decision, so I reprimanded the deputy chief also. And
10 because no discipline had been issued I was able to have
11 a hearing. If discipline had been issued, I couldn't
12 redo it.

13 **Q. Okay. I'm going to show you another document in**
14 **relation to Abel's shooting of James England, and this**
15 **is Knight Exhibit 16.**

16 - - - -

17 (Thereupon, Knight Exhibit 16 was shown.)

18 - - - -

19 BY MS. GELSOMINO:

20 **Q. This is the routing sheet for the investigation**
21 **into the shooting of James England, right?**

22 A. Yes.

23 **Q. Did you review this before the hearing?**

24 A. I'm sure it was part of the package. It doesn't
25 tell me much. I wouldn't have paid much attention to

1 it.

2 **Q. It's multiple pages, but what this tells you is**
3 that the chain of command recommended discipline, right?

4 A. I don't believe that Sergeant Griffis made a
5 disciplinary recommendation.

6 **Q. Right. Other than Sergeant Griffis, because he**
7 attached a different letter, everyone else in the chain
8 of command recommended discipline, right?

9 A. Correct.

10 **Q. Here's the third page. Just to make sure we're**
11 accurate, everyone other than Sergeant Griffis, who is
12 the lowest on the chain of command recommended --

13 A. Can you repeat the question? You're fading.

14 **Q. I'm sorry. I just want to make sure that this**
15 three page routing sheet tells us that everyone in the
16 chain of command other than Sergeant Griffis recommended
17 discipline?

18 A. Correct.

19 **Q. And Sergeant Griffis is the lowest level on the**
20 chain of command of Officer Abel, right?

21 A. And I don't know that this page does exactly
22 what you said because some of them say, "see attached
23 letter," so I'd have to look at this closer to see if
24 they actually made that recommendation on this routing
25 sheet. Gardner did. Knight just said, "see attached

1 response," so his was in the letter.

2 **Q. The letter we just looked at, right?**

3 A. Yes.

4 **Q. Which he did recommend discipline?**

5 A. Right.

6 **Q. Gardner says, "reviewed recommendations." What**
7 **does that mean?**

8 A. If you'll scroll up a page.

9 **Q. There we go. So Gardner on this routing sheet**
10 **indicated that he reviewed Sergeant Griffis'**
11 **recommendation and disagreed with it, right?**

12 A. Yeah. So look at the dates on the far right.
13 The bottom page I believe is the earliest page.

14 MR. MILLER: I'm going to object as to
15 form a little bit on this. Can we be clear as to
16 whether we're talking about this as a single routing
17 sheet or are these different routing sheets?

18 MS. GELSOMINO: I don't know the
19 answer to that.

20 BY MS. GELSOMINO:

21 **Q. Is this a single or multiple routing sheets?**

22 A. There's multiple pages, obviously, but it's part
23 of one package. But if you look at the dates on the
24 right, I believe the last page was the first page,
25 because that started back in November of '15, I believe.

1 So it came to Deputy Chief Kuebler and he distributes
2 the investigation to the firearms board members, they
3 make their recommendations, and then it comes back to
4 him to send to the chain of command that it belongs to,
5 and in this case it was his. So he's sending it down
6 for them to review. Gardner sends it to Knight, who
7 sends it to Griffis. Griffis reads it, writes his
8 recommendation, and then after Griffis has made his
9 recommendation it goes to Knight. And you can see that
10 Griffis got it in November. He forwarded it a month
11 later or so. Knight got it in December, and he had it
12 for about a week. Gardner got it on the 6th of January,
13 and he forward it on the 29th. So, that kind of tells
14 you how long they had the investigation, reviewed it,
15 and took the time to write their comments.

16 **Q. That makes sense. So, Griffis was the first one**
17 **to actually review it and make a determination?**

18 A. Correct.

19 **Q. So Griffis is the lowest on the chain of command**
20 **for Abel, right, because he's the sergeant?**

21 A. Immediate supervisor. And the contract requires
22 that the immediate supervisor's opinion matters greatly.

23 **Q. Why?**

24 A. Because they're the closest to the officer,
25 knowing who they are, how they work, what they do, all

1 of that kind of thing. In article 10, I believe 10.3,
2 it discusses weight of the immediate supervisor's
3 opinion.

4 **Q. Do you agree with that?**

5 A. I believe it's important. I don't know that I
6 give it the weight that it's been given. I believe that
7 a supervisor of six months doesn't have nearly the
8 knowledge and experience of a chief for 39 years, or 7
9 years, or whatever. My experience, my knowledge, my
10 training, my education, all of that, and my opinion
11 mattered greatly with regard to these things compared to
12 somebody who this may be the first police involved
13 shooting investigation that they've seen, when I've seen
14 hundreds of them.

15 **Q. Does the division have any concerns regarding an**
16 **immediate supervisor's potential bias toward an officer?**

17 A. Yes.

18 **Q. How is that dealt with?**

19 A. Through training. We talk about bias every
20 year. There's training about bias-based profiling,
21 implicit bias, and different things. We're always
22 trying to make sure that people are making decisions
23 based on objectivity rather than subjectively on who
24 they know, how they know them, all that kind of stuff.
25 We have rules in place that says if you were part of --

1 like an IA investigator is not allowed to investigate a
2 family member or a friend. It's right into the SOP.
3 You can't do that. You have to recuse yourself. If you
4 were involved in a particular incident as a sergeant
5 you're not allowed to make a ruling in that particular
6 incident for the officers under your command.

7 **Q. Can you say that last part again, please?**

8 A. I meant investigation. You're not allowed to do
9 the investigation.

10 **Q. If you're a sergeant?**

11 A. That was in the incident. If you were part of
12 an incident, you're not allowed to do the investigation.

13 **Q. Okay. Because in this case Sergeant Griffis was**
14 **part of the incident?**

15 A. Yes. Correct. I misspoke.

16 **Q. Okay.**

17 A. You're not allowed to do the investigation, and
18 that's written into the rules as well.

19 **Q. But you can make a ruling?**

20 A. Yeah. The contract basically requires that.

21 **Q. Right. In some departments there are like**
22 **independent review boards, or civilian police**
23 **accountably review boards and stuff like that. Is there**
24 **any kind of independent review of officer complaints or**
25 **the disciplinary process within the division of police**

1 in Columbus?

2 A. I would say nothing like we're going to get next
3 year. There's different things. First of all, all of
4 the records are available to anybody. If an
5 investigation of a complaint comes in and the person
6 didn't like it, they can appeal. There's nothing formal
7 until next year probably.

8 **Q. Do you think it's important to have some kind of**
9 independent review of officer conduct outside of chain
10 of command?

11 A. Well, I think it's important if you have a
12 system in place that doesn't have checks and balances
13 that as a culture of corruption, misbehavior, all of
14 that, a lack of transparency. Like in California, as I
15 said, somebody should be looking at who that is
16 happening with by whatever. I think if you're going to
17 have civilian review that it is something that comes
18 with some understanding. Obviously, in a criminal case,
19 the civilian review is either a Grand Jury or a jury if
20 they're charged criminally.

21 **Q. Right. During the time of these shootings in**
22 2015, 2016, there was no independent review of policy
23 violation determination, right?

24 A. Correct.

25 **Q. Okay. Let's look at the hearing transcript.**

1 **You said that you reviewed this in advance of the**
2 deposition, right?

3 A. Yes.

4 **Q. So this I don't believe has been previously**
5 marked, so I'm going to mark this as Exhibit 2. I'm
6 going to run through some specific parts of this. I'm
7 sorry. This actually was marked as Kuebler **Exhibit 20**.
8 I'm going to keep that as Kuebler **Exhibit 20**.

9 - - - -

10 (Thereupon, Kuebler **Exhibit 20** was shown.)

11 - - - -

12 BY MS. GELSOMINO:

13 **Q. I'm going to go through certain parts of this**
14 transcript. If there's ever any point that you want to
15 look at other parts, just tell me.

16 A. Okay.

17 **Q. I'm skipping ahead to page seven. At this point**
18 on page seven the Union attorney is comparing this case
19 of Abel to the McClellan case, and we talked about the
20 McClellan case. What did you understand the Union
21 attorney to be arguing here?

22 A. Well, the Union attorney was all about not
23 trying to second guess, you know, when you're seated at
24 your desk as compared to being compared to being in the
25 heat of the moment with bad guys and suspects and other

1 things. So they were trying to say that here's a case
2 where this officer fired from the shed, and I think they
3 were trying to argue that Officer Abel was in more
4 danger than McClellan to some degree. I'm speculating
5 here. I think that's what you asked me to do.

6 **Q. Of how you understood it.**

7 A. Yeah. I think they were trying to say that the
8 situation involving Officer Abel is maybe even more
9 dangerous than McClellan.

10 **Q. Was this a compelling argument to you?**

11 A. I mean, I took all of it into consideration.
12 You can see my questions at the end were still
13 challenging the circumstances. All of it is part of my
14 consideration.

15 **Q. Was this part of the defense, the Union**
16 **attorney's argument, a factor that impacted your**
17 **decision to overturn discipline in this case?**

18 A. You said "overturn discipline." No discipline
19 had been leveled at this point in time. I'm having a
20 hearing to determine discipline. It's just the
21 departmental charges, whether or not they're sustained
22 or not, just to be clear.

23 **Q. Thank you for that. So in the end you found**
24 **that Abel was not guilty of departmental charges, right?**

25 A. I determined that he was not in violation of our

1 rules.

2 **Q. And did this Union attorney's argument regarding**
3 McClellan and the fact that McClellan's discipline was
4 overturned in arbitration a factor that impacted your
5 decision to find that Abel was not in violation of
6 departmental policy?

7 A. I don't break down my decision-making based on
8 whether this was five percent or ten percent or anything
9 like that, but, obviously, I listened to the whole
10 presentation. I well understood the McClellan case, and
11 what I knew about the McClellan case certainly would
12 have played into my decision-making.

13 **Q. Okay. So I moved to page 13, and down here**
14 there's a question from you that starts, "but you're not
15 on that side of the door, so the danger to you is no
16 longer being pulled in." Do you see that?

17 A. I do.

18 **Q. Did you believe that when Abel was not being**
19 pulled into the door that he was no longer in danger
20 that would warrant the use of deadly force?

21 A. He could have been in danger, but he might not
22 have known about it. The guy might have had a gun. You
23 don't do might haves, you do what you know.

24 **Q. Right.**

25 A. So, I mean, we had a former chief of police that

1 shot a burglar who was standing outside of his house.
2 He was found to be not in violation of the firearms
3 policy. The burglar wasn't attacking him or anything
4 like that. He was standing outside. So -- what was the
5 question?

6 **Q. So is it a violation of departmental policy then**
7 **to use deadly force based on a speculation of potential**
8 **danger?**

9 A. Well, it has to be more than speculation. You
10 need to believe that you're in danger.

11 **Q. In order to use deadly force, according to the**
12 **division policy, an officer must be able to articulate**
13 **an actual imminent fear of death or great bodily harm,**
14 **correct?**

15 A. Correct.

16 **Q. In this case in the Abel hearing were you**
17 **questioning whether or not Abel had an actual fear of**
18 **imminent death or great bodily harm as opposed to a**
19 **speculative fear?**

20 A. I was questioning what type of danger he was in.
21 It's a lot harder to prove you're in danger when there's
22 a degree of separation with another person and there's a
23 barrier --

24 **Q. I'm sorry. After you said there was a barrier**
25 **you broke up.**

1 A. So, having the ability to take cover isn't
2 always total protection, but it's certainly a factor of
3 whether or not there's a true danger to you. The
4 officer can't just think that he's in trouble, he has to
5 believe that there's a threat that, you know, he could
6 be hurt.

7 **Q. Did you learn something at some point in this**
8 hearing that led you to believe that Abel actually
9 believed that he was in imminent danger of death or
10 great bodily harm?

11 A. I came to the belief that the danger that I had
12 read about was different than I heard about. Yes. I
13 felt that he explained the type of danger that he was in
14 and how he got there, what different aspects of that
15 were to the point where what I had read seemed different
16 than what I had heard.

17 **Q. What was the danger that he was in that you**
18 heard about in this hearing that lead you to find that
19 he did not violate departmental rules?

20 A. How close he described to being pulled into the
21 porch or whatever, that room. It sounded to me like he
22 was -- it was very possible that he could have been
23 pulled into the room. Tactically you wouldn't want to
24 necessarily be in that position, but when the guy
25 grabbed his arm as he described, then he is in danger if

1 he does pull him into this small area with barking
2 dangerous dogs and being on that side he could have been
3 injured, knocked unconscious, you know, lost a weapon,
4 whatever. I believe that he explained the danger that
5 he was in to a degree that it became objectively
6 reasonable that he felt that way and took the action
7 that he did.

8 **Q. What was the actual and imminent threat of death**
9 or great bodily harm that Abel was facing at the time
10 that he used deadly force?

11 A. Being pulled into that room by the suspect, and
12 either being mauled by dogs, or disarmed by the suspect,
13 or being knocked unconscious and potentially being
14 injured.

15 **Q. Did Abel articulate a fear of the dogs?**

16 A. Yes.

17 **Q. Did Abel articulate a fear of being knocked**
18 unconscious?

19 A. It's in here. I don't remember if it was the
20 attorney or Abel saying it.

21 **Q. Was the suspect, England, handcuffed at the time**
22 that he was shot by Abel?

23 A. I have to believe that he probably was. There's
24 no other real good explanation for the way that we found
25 him later. I don't have proof of that, but logic says,

1 yes, he probably was.

2 **Q. So if Abel -- strike that. If England was**
3 handcuffed at the time that he was shot by Abel, how
4 could he have potentially disarmed Abel?

5 A. Well, you read the comments from the attorney
6 who described two officers being shot and killed in
7 another jurisdiction by a handcuffed prisoner. I,
8 myself, have had problems with handcuffed prisoners.
9 They can be dangerous. We had one that kicked an
10 officer with his foot while he was handcuffed.
11 Certainly restrains are a good thing, but they're not
12 necessarily something that prevents somebody from
13 seriously injuring or killing an officer.

14 **Q. There was no indication that England ever**
15 attempted to disarm Abel or any other officer, correct?

16 A. I don't believe that anybody described that,
17 correct.

18 **Q. And likewise, there was no allegation that**
19 England ever made any threat to any officer, right?

20 MR. MILLER: Objection. Go ahead and
21 answer.

22 A. I can't be certain of the description of his
23 language. I remember he was -- the statement said that
24 he was resisting their attempts to get him to leave the
25 house. He was, obviously, attempting to resist arrest.

1 I don't know if he was described as having threatened
2 the officers. I think they told him to put the dogs
3 away and he would not do that.

4 BY MS. GELSOMINO:

5 **Q. There were other officers on the scene who**
6 indicated that they did not know why Abel shot, right?

7 A. I believe so.

8 **Q. Who said that?**

9 A. I don't know. I don't remember which one said
10 which.

11 **Q. Do you know when they said that?**

12 A. Excuse me.

13 **Q. When did they say that? Like in what context?**

14 A. I don't know if they said it to each other then,
15 or if they said it in their interviews with the CIRT
16 team.

17 **Q. Did you ever make any effort to interview the**
18 witness officer directly?

19 A. That would have been inappropriate for me to get
20 involved in the investigation.

21 **Q. Well, I mean, after like the conclusion of the**
22 investigation. You already testified that you felt it
23 was important for England to have an opportunity to talk
24 to you in person to explain things, right?

25 A. Right.

1 **Q.** Did you ever attempt to talk to anybody else who
2 witnessed this in person so you could get a better
3 understanding of what they observed?

4 A. No.

5 **Q.** Why not?

6 A. It wasn't something that I felt that I needed to
7 do. I have an understanding of the investigation. I
8 understood that that was the case, but I also have
9 enough experience and knowledge to know that just
10 because you didn't see it, hear it or understand what it
11 was, doesn't mean that it wasn't going on. I've had
12 lots of conflicting statements before from people that
13 didn't see what it was that caused them to fire. Other
14 people have been involved in the same situations, and
15 some fire, some don't. I didn't consider that something
16 that was relevant once I made my decision.

17 **Q.** Had you decided to give those people an
18 opportunity to explain their version of events in person
19 you could have done that, right? You could have asked
20 them to talk to you about it?

21 A. I could have, but, I mean, I don't get involved
22 in the investigation. So if you're talking about after
23 the chief's hearing, I could have, yes.

24 **Q.** Okay. Do you defer to the account of fear of
25 death or serious bodily harm by an officer who uses

1 deadly force?

2 A. What was the first part of the question?

3 **Q. Do you defer to the officer's account?**

4 A. I don't defer.

5 **Q. When there are conflicting statements about**
6 justification for a use of force do you accept the
7 shooting officer's account over the other officer's
8 accounts?

9 A. Not necessarily, no. It's all taken into
10 consideration.

11 **Q. But you only give the shooting officer the**
12 opportunity to explain themselves in person, right?

13 MR. MILLER: Objection. Go ahead and
14 answer.

15 A. Yeah. The other officers are not part of the
16 chief's hearing.

17 BY MS. GELSOMINO:

18 **Q. Do you accept the shooting officer's account of**
19 their own fear in relation to their justification for
20 the use of force?

21 A. I don't know what you mean by accept.

22 **Q. Well, if an officer tells you that they were**
23 afraid and therefore used deadly force, do you
24 interrogate that fear in any way?

25 A. Well, first of all, I would only have questions

1 if I thought that they were in violation. In an
2 investigation that didn't result in recommendations for
3 sustained violation of the rules, I wouldn't have any
4 connection to that investigation. We're only talking
5 about those that somebody has said they're outside of
6 policy. So I would ask questions of that involved
7 officer, but if you mean accept, like, do I just believe
8 it and leave it, no.

9 **Q. Okay. So on page 15 of this transcript, your**
10 **comments on the bottom you state, "it's not your tactics**
11 **that I'm judging, but I think the tactics do matter in**
12 **how we resolve some situations." What did you mean by**
13 **that?**

14 **A.** Tactics are extremely important with regard to
15 preventing situations where we might need to use deadly
16 force. A number of things do go the right way because
17 officers use good tactics. After the Fegurson situation
18 I prepared a three hour training course that
19 specifically talked about tactics that could be used to
20 prevent deadly force. I trained personally more than
21 500 CPD personnel on how to use good tactics so that
22 they can avoid using deadly force. So, yes, they're
23 very important in how to resolve some situations and
24 this happens daily among CPD officers that they're using
25 very good tactics and not shooting the hundreds of

1 thousands of people that they see with guns or in
2 situations that could be potentially dangerous.

3 **Q. What was that training called?**

4 A. Pride Saves Lives. I even appeared on PBS news
5 hour weekend. It got national attention and they
6 profiled it in their news weekend report.

7 **Q. Did you say pride, P-R-I-D-E?**

8 A. That's the acronym for the core values at the
9 time in the division of police. Professionalism,
10 respect, integrity, discipline and enthusiasm. Those
11 five things can save lives.

12 **Q. Did you create a Power Point presentation or any**
13 **kind of materials for that?**

14 A. I sure did.

15 **Q. Do you still have those?**

16 A. Yes.

17 MR. MILLER: Counsel, we produced
18 those.

19 MS. GELSOMINO: Thank you. I was
20 going to ask you.

21 BY MS. GELSOMINO:

22 **Q. Okay. So in terms of a tactical review in the**
23 **context of this disciplinary hearing, why did you say**
24 **that you were not judging tactics in a chief's hearing?**

25 A. Because tactics aren't a rule of conduct. It

1 doesn't say that you can't go over an open door or lean
2 in. It doesn't say that you have to -- you know, like
3 what was mentioned in here is that this sergeant pulled
4 into the driveway next door and Officer Abel was I
5 believe disturbed because he thought here's this felony
6 suspect that they're trying to arrest now just got a
7 warning, and even an officer on the street you try to
8 maintain a low profile if you're trying to sneak up on
9 somebody so they don't run. Running often results in
10 either a use of force or the suspect getting away or
11 something else. So good tactics mean trying to be as
12 safe as possible. It's like why we don't put our
13 beacons on when we're trying to stop a traffic violator
14 from a half mile away, because they have a half mile to
15 turn down streets and that kind of stuff. You use good
16 tactics for your own safety, to reduce resistance, and
17 that ends up being for the suspect's safety, and you use
18 good tactics to protect innocent people.

19 **Q. Can tactical decisions impact your determination**
20 **of the reasonableness of use of force?**

21 A. Yes.

22 **Q. In this case, did they?**

23 A. Well, again, I can't discipline him for reaching
24 in the door or anything like that. But, yeah, if an
25 officer were to walk into the middle of the high speed

1 lane on the freeway and a car is coming at that person,
2 the cop, and the cop shoots at the car because he's in
3 imminent danger, his tactical decision to go into that
4 lane of traffic would be, you know, totally
5 unreasonable, but you could argue that the car was
6 causing imminent danger. It's all about the
7 reasonableness of the entire situation, but there's no
8 rule that I could discipline for with regard to tactics.

9 **Q. In that case if an officer were to walk into**
10 oncoming traffic and then use that oncoming traffic as a
11 justification of a use of force, would you find that use
12 of force to be unreasonable, or outside of policy I
13 should say?

14 **A.** That's the finding, outside of policy. I had a
15 very similar situation like that when I was on the
16 Firearms Review Board. An officer was trying to stop a
17 drunk driver and stood in the middle of the only exit
18 for that particular person driving out of an exit, and
19 when this car started approaching him he started
20 shooting at the vehicle. There were a number of things
21 wrong with that. But yes, I recommended that that
22 firearm's incident be ruled outside of policy, and
23 practically everybody else disagreed with me because
24 they said he's in imminent danger. But I wrote a 14
25 page explanation as to why I thought it was outside of

1 policy, and ultimately, I believe it was Chief Jackson,
2 ruled that it was sustained, but he issued no
3 discipline.

4 **Q. How is that any different than the situation**
5 here where Abel put himself in this position that he
6 then relied upon in attempting to justify his use of
7 force?

8 A. You go knock on an apartment door because you're
9 serving a warrant and the guy comes rushing out with a
10 deadly weapon or a knife or whatever, you're not going
11 to discipline them for standing in that doorway or
12 hallway or something else. I mean, it depends on all of
13 the circumstances. It's not unreasonable to try to
14 reach in and unlock a door. It's not unreasonable to
15 try to grab somebody. It could have been bad tactics,
16 it doesn't mean that it was wrong. It doesn't mean that
17 it was in violation of the rules. I understand that it
18 may be hard to comprehend, but you can't say use good
19 tactics, and if you don't you're going to get in
20 trouble, because sometimes the circumstances don't allow
21 that.

22 I was driving down Mound Street when I was an
23 officer on the street with my seatbelt on and some guy
24 runs out in front of the cruiser with a handgun in his
25 hand. We didn't intentionally have bad tactics, but

1 we're stuck and we have to run out. Sometimes the
2 circumstances you fall into based on whatever is
3 happening in front out you.

4 **Q. In this case with Abel, do you believe that he**
5 **made bad tactical decisions?**

6 A. Well, I think the fact that he was unable to
7 maintain footing, he was dangling rather than -- I think
8 he was not standing on the ground he testified to,
9 that's not the best tactical position, but that's not
10 why the situation was determined by me to be objectively
11 reasonable.

12 **Q. In this case Abel made bad tactical decisions**
13 **that put him into a situation?**

14 A. What bad tactical situation?

15 **Q. That's what I'm asking you. Strike that. Do**
16 **you believe that Abel made a bad tactical decision by**
17 **putting himself in a position to lose his footing?**

18 A. I wouldn't necessarily describe it as bad
19 tactics. I've been off the ground before trying to
20 crawl in a window myself. Sometimes that's the
21 circumstances. You're trying to go check out an open
22 window, an open door, you're in a bad position. I'm not
23 going to say it was bad tactics, it's a tactic that put
24 him in a bad position.

25 **Q. Do you believe that Abel made sound tactical**

1 **decisions in his interaction with James England?**

2 A. I will have to say that I don't know all of the
3 tactics that he used, so I can't -- as far as what I can
4 tell from reading this, I don't think that he was in
5 violation of this policy because of his tactical
6 decisions.

7 **Q. Well, you determined that you didn't think he**
8 **was in violation of the policy at all, right?**

9 A. Correct.

10 **Q. But you raised in this hearing tactical**
11 **decisions. So, do you believe that any of the tactical**
12 **decisions that Abel made were unsound or potentially**
13 **increased the danger of the situation?**

14 A. I believe I already testified that him reaching
15 through the door and not being able to maintain his
16 footing on the ground was, you know, putting him in a
17 bad position.

18 **Q. Okay. And then as a result of him putting**
19 **himself into a bad position, he then claimed that that**
20 **was part of the justification for him using deadly**
21 **force, right?**

22 A. No. He testified that he was in fear of being
23 pulled in. He said he was being pulled into the opening
24 by the suspect.

25 **Q. And he was in a position to be able to be pulled**

1 **into the door by the suspect because he put himself**
2 through the door and in a position where he lost his
3 footing, right?

4 A. That's what happened. I don't know if that
5 would have been different if he had been able to
6 maintain his feet on the ground either, but yes, that
7 was the position that he was in.

8 **Q. By firing his gun did Abel prevent himself from**
9 being pulled into the porch area?

10 A. I don't know. He fired his weapon because he
11 was in fear for the reasons I said earlier.

12 **Q. Did you, or did anyone in the division, review**
13 Abel or any other officers' tactical decisions in
14 relation to the arrest and the use of force on James
15 England?

16 A. I only have knowledge of what I did. I don't
17 know what they did.

18 **Q. Well, you're the chief of police at the time,**
19 right?

20 A. Yes.

21 **Q. And you've been designated here to testify on**
22 behalf of the city?

23 A. Yes.

24 **Q. So you're here to testify today on all the**
25 information reasonably known to the municipality

1 regarding this review?

2 MR. MILLER: Objection. Go ahead and
3 answer.

4 A. What's the question?

5 BY MS. GELSOMINO:

6 **Q. The question is, regarding a tactical review of**
7 any of the tactical decisions made by officers in
8 relation to the shooting of James England, did it ever
9 happen?

10 A. Not as directed by me. It may have happened
11 based on the chain of command passing information down,
12 but I don't have knowledge of that.

13 **Q. Was there ever any counselling or training done**
14 as a result of the shooting of James England and the
15 tactical decisions made therein?

16 A. Not -- I don't recall any directions that I may
17 have given to the deputy chief with regard to that.
18 It's possible that I mentioned something in the hearing
19 after the recorded portion. It's recorded up to the
20 point where the officer leaves, and then I typically ask
21 the deputy chief what their thoughts were. When I made
22 my decision I might have very well have said something
23 to him to follow-up on that, but I don't recall
24 specifics. It was a long time ago.

25 **Q. Did the division ever take any action to ensure**

1 **that Abel and the other officers learned from this**
2 situation so as not to repeat it again in the future?

3 A. As I previously described, the training that I,
4 myself, conducted about tactics I, myself, order the
5 training bureau to put on training about shooting at
6 dogs or shooting at cars. This would have appeared in
7 the discipline tracking system that I described earlier.
8 I don't recall that this particular situation was ever
9 brought up as an example, but tactics have been trained
10 and discussed and counselled on all of that for many
11 years.

12 **Q. Did you recommend training regarding dogs as a**
13 result of this incident?

14 A. I have recommended training about shooting at
15 dogs any number of times since I was a commander. I
16 made policy decisions as a chief about it. I made
17 recommendations about policy decisions as a commander,
18 constantly trying to make sure that shooting at dogs is
19 given the seriousness of it. We've had, even when I was
20 on the Firearms Review Board, we had an officer that
21 shot at a couple of dogs, the bullet ricocheted on the
22 sidewalk and ended up hitting his partner with shrapnel
23 just under the eye.

24 **Q. My question is specifically just related to this**
25 case. Did you as a result of this case make any

1 recommendations for retraining or policy changes?

2 A. Not to my knowledge.

3 **Q. On the next page you say at the top of page 16,**

4 "the perception could be very real to you, but it could
5 also be unreasonable." Are you stating here that the
6 officer's perspective of danger could be very real to
7 him, but still could be an unreasonable fear?

8 A. I think that's exactly what that says.

9 **Q. Do you still believe that to be true?**

10 A. That somebody could perceive a danger and it
11 could be unreasonable, yes.

12 **Q. You testified that after the hearing you turn**
13 **off the recording and then have some conversation with**
14 **the deputy chief, right?**

15 A. Yeah. Usually with the people that are present.
16 I don't always ask each one of them for their opinion,
17 but I ask for thoughts. If I have questions I might ask
18 them a particular question or I might give direction.

19 **Q. Did you do that in this case?**

20 A. I previously said I don't recall any.

21 **Q. Okay. I'm sorry. Did any of the -- did Deputy**
22 **Ken Kuebler ever indicate to you that he changed his**
23 **opinion regarding the out-of-policy finding?**

24 A. I don't recall.

25 **Q. What did do you after the hearing in relation to**

1 **making a determination about in or out-of-policy?**

2 A. Like I said, I would have discussed it with some
3 of those people there, asked for their opinions. I
4 can't remember this specific hearing itself, but
5 sometimes I make a decision based on that conversation
6 and sometimes I decide to wait until I either do more
7 review, go back over statements or investigations, or
8 just gave myself time to think about it. Sometimes
9 doing research, looking for parallels. Was something
10 else a similar situation? Some of the times I make a
11 decision soon after the hearing, and some of the times I
12 do more after that and then make my decision.

13 **Q. And in this case what did do you?**

14 A. I don't recall.

15 **Q. Do you recall whether you researched any other**
16 **cases?**

17 A. No, I don't. I don't recall.

18 **Q. Would you have like consulted with anyone else**
19 **other than these people who were present for the hearing**
20 **in you making a determination?**

21 A. I know that I have. I just don't know if it was
22 on this case.

23 **Q. Okay. Did you ever talk to the safety director**
24 **about this case?**

25 A. Not that I recall.

1 **Q.** And because you found this shooting to be within
2 policy it never would have gone onto the safety
3 director, correct?

4 A. Correct.

5 **Q.** Okay. So I'm going to show you now your routing
6 sheet comments, which has been marked as Abel 14.

7 - - - -

8 (Thereupon, Abel Exhibit 14 was shown.)

9 - - - -

10 BY MS. GELSOMINO:

11 **Q.** Is this the only document that you've created
12 regarding your findings?

13 A. There should have been an entry into the
14 discipline tracking on the intranet that I mentioned
15 before.

16 **Q.** Okay. You wrote this yourself, right?

17 A. Yeah. It's unusual for me to write out my
18 comments, but because I disagreed with so many I felt
19 that it was important to explain why I came up with a
20 different decision than the people in the chain of
21 command that said otherwise.

22 **Q.** Did you create any other documentation yourself
23 regarding your findings?

24 A. Not to my knowledge. This would have been
25 probably very similar to the information that would have

1 appeared in the disciplinary tracking.

2 **Q. So I know we've kind of already talked about**
3 this, but I just want to make sure that I really
4 understand. Were there any other factors, other than
5 what you specifically stated in this memo, that impacted
6 your decision to disagree with the chain of command and
7 to find the shooting within policy?

8 A. No. I mean, I think I said it's a totality of
9 all the circumstances and the information presented in
10 the hearing that led me to my decision.

11 **Q. I understand that, but I need to know the**
12 factors that went into your determination of the
13 totality of the circumstances. Is there any other
14 factors other than what you've written here that you
15 considered when determining the totality of the
16 circumstances?

17 A. I would just say that I've been involved in
18 many, many, many investigations of use of deadly force,
19 use of force. I've been to training. I've been a
20 collector, if you will, of articles on use of force and
21 prepared that training that I did. So, factors about
22 understanding reaction time. Factors about
23 understanding, you know, reasonable belief and
24 speculation. Factors about a lot of different things
25 played into this, so what I know played into it as well

1 as what I heard.

2 **Q. And you determined -- do you stand by your**
3 decision in this case?

4 A. Yes.

5 **Q. And you do that even knowing that England was**
6 unarmed?

7 A. Yes.

8 **Q. And you stand by your decision that this**
9 shooting was within policy even though that you know
10 England was handcuffed at the time, right?

11 A. Let me go back because you said that I know he
12 was unarmed. I don't know that he was unarmed with any
13 certainty. I just know that we didn't find any weapon
14 that could be found. So, yes, that's how I would
15 respond to that question. As far as being handcuffed,
16 he was handcuffed when we got him. I presume with a
17 pretty good deal of certainty that he was handcuffed. I
18 don't think that he would have handcuffed himself.

19 **Q. Right.**

20 A. It might have been loose. It could have been
21 loose and he could have gotten a hand out. I'm just
22 saying what could have happened. When he fell, or ran,
23 or crawled through the dog thing it might have been
24 tightened up on him. All sorts of things could have
25 happened, but we found him with handcuffs on.

1 **Q.** Did this possibility of him having a loose
2 handcuff that he could have slipped out of that you just
3 articulated impact your determination that this use of
4 deadly force was within policy?

5 A. No.

6 **Q.** Did the possibility that England was armed, even
7 though there was never any evidence that he was armed on
8 the scene, impact your determination that the use of
9 deadly force was within policy?

10 A. I don't believe so, no. What impacted it was
11 the fact that he was described as being -- pulling
12 officer Abel into that room with the dogs that were
13 clearly present. No denying they were there barking and
14 agitated.

15 **Q.** Did you consider England's version of events in
16 making your determination?

17 A. I'd have to say that I do recall what he
18 testified to, if anything.

19 **Q.** But did you have his statement available to you
20 at the time of your determination here?

21 A. If he gave a statement it would have been part
22 of the investigative package.

23 **Q.** If the dogs here were the source of the danger
24 does that justify the use of deadly force on a person
25 under the division policy?

1 A. The dog's presence? Can you ask the question
2 again?

3 **Q. If Officer Abel articulated a fear of the dogs**
4 does that give him justification under the division
5 policy to use deadly force against Abel?

6 A. A fear of dogs is not the justification, a fear
7 of being injured by the dogs is, and whether or not
8 that's a legitimate threat is a big decision. Were the
9 dogs tied up? Were they able to reach him? You know,
10 was it a chihuahua or a pitbull all matters. It's not a
11 simple answer on that.

12 **Q. If an officer articulates a fear of a dog, does**
13 that provide him justification for shooting at a person
14 who is in the vicinity of the dog?

15 MR. MILLER: Objection. I don't even
16 really understand the question. Is it literally just a
17 fear of the dogs generally and nothing more?

18 MS. GELSOMINO: Yeah.

19 MR. MILLER: Okay.

20 A. If you're asking does a fear of a dog justify
21 shooting a person, not without more facts in play, no.

22 BY MS. GELSOMINO:

23 **Q. What facts would impact that situation and**
24 justification for shooting a person?

25 A. These facts.

1 MR. MILLER: Objection. We're going
2 far off field here of 30(b)6 and now we're starting to
3 ask hypotheticals as if she's an expert. You can keep
4 going down that road, we're coming up on 2:43 and we've
5 got more cases to go through.

6 MS. GELSOMINO: You could answer.

7 A. I said, these facts here in this particular case
8 are an example where it could be a factor.

9 BY MS. GELSOMINO:

10 **Q. Does a fear of serious physical harm from a dog**
11 **justify shooting a person in proximity to that dog?**

12 MR. MILLER: Objection. Can I just
13 have a standing objection to this outside the scope of a
14 30(b)6?

15 MS. GELSOMINO: Go for it.

16 A. It's all based on the circumstances. You're
17 giving me a question without knowing all of the
18 circumstances, and I judge it based on all of the
19 circumstances.

20 BY MS. GELSOMINO:

21 **Q. I understand that. But under the division**
22 **policy is what I'm trying to get at. So if -- I'm just**
23 **trying to isolate these things. If an officer**
24 **articulates a fear of serious physical injury from a**
25 **dog, no other articulation of fear, does that serious**

1 threat of physical harm from a dog justify shooting a
2 person who is in proximity of that dog under the
3 division policies?

4 A. There's just no automatic. I can't respond the
5 way that you wanted me to. A fear of a dog is not
6 justification to shot a person, sometimes even a dog.
7 There are many other circumstances that have to be
8 analyzed to make a decision on whether or not it's in
9 violation of the policy.

10 MS. GELSOMINO: Okay. Let's take a
11 quick break here.

12 - - - -

13 (Thereupon, an off-the-record discussion was held.)

14 - - - -

15 BY MS. GELSOMINO:

16 **Q. So if Officer Abel had articulated only his fear**
17 of possibly falling over the doorway into the porch
18 without more would that have justified his use of deadly
19 force?

20 A. I don't believe so.

21 **Q. If he had articulated a fear of the fact that**
22 England might attempt to disarm him if he had landed on
23 the other side of the porch, would that alone have
24 justified his use of deadly force against England?

25 A. I don't believe so, no.

1 **Q.** And if Abel had articulated only his fear of
2 serious physical harm from the dog, would that have
3 justified his use of deadly force against England?

4 A. That would depend on what's going on with
5 England at the time. Is he trying to control the dogs?
6 Is he ordering the dogs to attack him? I believe that
7 some owners of dogs have been criminally charged for
8 doing just that.

9 **Q.** Sure. Is there any evidence in this case that
10 England was attempting to the dog or order the dog to
11 attack any of the officers including Abel?

12 A. I don't know if there was any evidence of him
13 ordering the dogs to attack, but I also wouldn't know if
14 he had -- you know, we train our dogs with German
15 commands. Sometimes trainers use certain words that
16 aren't recognized by other people for commands for dogs.
17 I didn't hear anyone say that they heard him order the
18 dogs to do anything, but he also was not controlling the
19 dogs from what I understood.

20 **Q.** If Abel had articulated only that he had a fear
21 of physical harm from the dogs without any report that
22 England was attempting to use the dogs to harm Abel,
23 would that have been enough to justify the use of deadly
24 force against England?

25 A. If he was in fear of serious bodily harm --

1 **Q. From the dog. And he did not claim that England**
2 was attempting to use the dogs, order the dogs to harm
3 him in any way, would that have justified Abel's use of
4 deadly force against England?

5 A. Based on what you're describing, no, I don't
6 believe so.

7 **Q. Okay. Did you have any role in informing Abel**
8 about your findings?

9 A. I would typically not communicate with the
10 officer. Generally I would make my decision, let the
11 PSB lieutenants know, let them reach out to the FOP and
12 the FOP would inform the officer. If I happen to bump
13 into the FOP person, if I made my decision I may have
14 told them, but that happened maybe once or twice in all
15 of the different discipline decisions I've made.
16 Typically I would tell the PSB lieutenant, they would
17 write it up and inform the FOP representative, if they
18 have an FOP rep. If they didn't, they would tell the
19 officer.

20 **Q. Okay. Let's talk about the shooting of Tyree**
21 King.

22 A. Okay.

23 **Q. Who was shot by Brian Mason?**

24 A. Yes.

25 **Q. When did you first learn of that shooting?**

1 A. Probably not too long after it happened.

2 **Q. Did you go to the scene for that shooting?**

3 A. I'm quite sure that I did because I remember
4 hearing that there were nuns that were witnesses and was
5 trying to find out where they might have been in order
6 to see what happened. So, yes, I was there. It was in
7 an alley and I do remember being there.

8 **Q. Did you speak to any of the witnesses on the**
9 **scene?**

10 A. I might have talked to one or more of the
11 officers that were witnesses, but I wouldn't have talked
12 to civilian witnesses, no.

13 **Q. Did you speak to any of the officer witnesses**
14 **about what happened?**

15 A. Absolutely not.

16 **Q. Okay. In this shooting the division made a**
17 **decision to have a press conference pretty early on,**
18 **right?**

19 A. It wasn't the division's decision. It was the
20 Mayor's decision.

21 **Q. The Mayor's decision?**

22 A. Yes.

23 **Q. Did you have any input into any conversation**
24 **from anyone at the mayor's office about the decision to**
25 **have a press conference?**

1 A. Absolutely.

2 **Q. Tell me about that.**

3 A. It was a tragedy, and it was certainly going to
4 raise questions in the community, and the sooner we
5 addressed -- we thought the sooner that people would
6 have an understanding of how a 13 year old would get
7 shot, and especially with the information that the gun
8 was a BB gun, knowing how that would sound without
9 addressing it. So it was a decision that we all felt
10 was right to do for our community to have a better
11 understanding of some of the circumstances. Obviously,
12 not all of them had been investigated by then, but we
13 were very concerned about the community having some
14 information about this tragedy.

15 **Q. What was the basis of the information that was**
16 **shared in this press conference?**

17 A. The basis of the information?

18 **Q. If the case hadn't been investigated, then what**
19 **were you relying upon in this press conference?**

20 A. Well, the gun was found at the scene, the BB
21 gun, but it looks like a real gun. And, you know, when
22 I was growing up BB guns were plastic toys that didn't
23 look anything like a gun. Nowadays they're
24 intentionally made to look like a real gun because
25 that's what people are buying. So we thought it was

1 extremely important that people have a better
2 understanding of how a BB gun can be perceived as a real
3 gun and a threat to an officer.

4 **Q. Other than the fact that the BB gun was found on**
5 the scene, what information was relied upon to give
6 information to the public at this press conference?

7 A. The information that we know, what the process
8 is. People don't pay attention to what the police are
9 doing until something big happens. It's important that
10 people know what's going to be looked at; how it's going
11 to be looked at; who's doing the investigation to let
12 people know what's going on.

13 **Q. You broke up a little bit there.**

14 A. I was saying, people don't pay attention to what
15 the police are doing until something big happens, and
16 when something does come to their awareness, it's
17 important for us to reiterate, especially since it's a
18 growing city and there might be somebody who has never
19 heard what the process is and what will happen next. We
20 don't share the details of the investigation because we
21 don't have all of them, but it's important to give some
22 information to the public about, yes, it's being
23 investigated. Yes, all the witnesses will be
24 interviewed. Yes, it will be reviewed by the Grand
25 Jury. To share information so that people know that we

1 have a process that will be followed.

2 **Q. At the press conference you stated that**
3 unfortunately it becomes necessary at times that the
4 police have to defend themselves. Do you remember that?

5 A. Yes.

6 **Q. At that point did you believe that Mason had**
7 been defending himself when he shot and killed Tyree?

8 A. I don't believe that I had made any decision on
9 whether or not he had, because I didn't even know what
10 his statement was, but I was describing in general that
11 officers sometimes have to use deadly force.

12 **Q. Mason was placed on administrative leave, right?**

13 A. Yes.

14 **Q. Has he ever returned back to the street?**

15 A. He had not gone back to the street when I
16 retired.

17 **Q. Why not?**

18 A. We reassigned him with agreement to the FOP and
19 Officer Mason to another assignment.

20 **Q. Why?**

21 A. He'd been involved in previous police involved
22 shootings, and it was unusual for someone to have that
23 many police involved shootings in a career. It's
24 unusual to have one. So we felt that for everybody's
25 sake it would be a good idea to get him out of that

1 scenario of being on patrol, living with another
2 investigation, and a lot of community concerns about,
3 you know, this particular officer. If he showed up on a
4 run they might have done something to him just because
5 of recognizing his name, but also because it is unusual
6 and it was time for us to, you know, see if he could be
7 out of that situation for a while and not be involved in
8 anything else of a similar nature.

9 **Q. Were each of these deadly shootings from Mason**
10 **determined by the division to be justified?**

11 A. I believe all of them were.

12 **Q. So if they were justified shootings and he did**
13 **nothing wrong, why did the division think it was**
14 **important to get him off the streets and away from**
15 **situations where he could use force again?**

16 A. Well, public sentiment is important. Officers
17 in Columbus didn't do anything wrong when Gorge Floyd
18 was killed either, but there were still riots in the
19 street. Part of the determining factor of how we deal
20 with things has to take into consideration what's best
21 for our community, too. Sometimes we're limited in our
22 ability to do certain things because of our FOP contract
23 with the city. I don't have the ability to
24 administratively reassign people but for just cause and
25 the needs and interests of the division of police. So I

1 have that ability, but often times if I do it
2 unwillingly to someone it's grieved.

3 Sometimes we've lost arbitration cases because
4 the chief at the time that made the decision to move
5 somebody, according to the arbitration, violated the
6 contract. It's not an easy process to get somebody
7 administratively reassigned. It has to be for
8 particular reasons, and you need to be able to justify
9 that. In this particular case I thought it was in the
10 best interest for everyone to give him a break from
11 patrol.

12 **Q. Is it possible that he returned to patrol at**
13 **some point?**

14 A. Unless there's been an agreement between Officer
15 Mason, the FOP and the safety director's officer that I
16 don't know about, it's possible.

17 **Q. Now, you said that you determined that it was**
18 **best that he not be on the street because of public**
19 **sentiment.**

20 A. That's part of it.

21 **Q. Okay. So, what were the other reasons that you**
22 **determined that Mason should not go back onto the**
23 **street?**

24 A. Being involved in a deadly force situation is
25 extremely stressful. You know, Brian seemed to handle

1 the previous situations okay, but this one, obviously,
2 involved a 13 year old. Sometimes you just need a break
3 and you don't recognize that you need a break.
4 Sometimes other people have to tell you to step back.
5 There's a gung-ho attitude, if you will, with officers
6 to go out and do their job, and it's hard not to. They
7 have strong feelings about helping people, serving
8 people. So if you tell them, no, you can't do that,
9 it's sometimes not well received, but sometimes that's
10 the best thing for them and sometimes they recognize it
11 afterwards. You don't know what's going to cause stress
12 to a particular officer. We had one officer that was
13 shot in the face and he was also involved in a head-on
14 car accident, and what traumatized that particular
15 officer more was the head-on crash. He couldn't drive
16 down that particular area without having flashbacks,
17 even though being shot in the face was more scary, if
18 you will. Sometimes we have to do what we think is best
19 for the officer even though they might not recognize it
20 that way.

21 - - - -

22 (Thereupon, a loss of Internet connection occurred.)

23 - - - -

24 MS. GELSOMINO: Clearly we just had a
25 disruption in the Zoom. Some of your answer may not be

1 in the transcript. I'm okay with it not being there.
2 Andy, are you okay with that part of the answer being
3 unclear in the transcript?

4 MR. MILLER: Not really. I actually
5 really liked it.

6 MS. GELSOMINO: Would you like her to
7 explain again?

8 MR. MILLER: You know what? No. I
9 have an affidavit if I want, so I'm tipping my hat a
10 little bit. You might want to put it back in if I'm
11 going to use it some other way. I don't care. I'm not
12 going to ask any questions of my own witness.

13 MS. GELSOMINO: You're going to use
14 her answer about another officer being shot in the face
15 to impact this case somehow?

16 MR. MILLER: I don't know. Like I
17 said, I'm just saying you heard it. It could be on the
18 record. You're not used to an attorney trying to not
19 pull a fast one on you. All I'm saying is that I liked
20 the answer.

21 MS. GELSOMINO: How could it possibly
22 be relevant to anything?

23 MR. MILLER: I have a hard time coming
24 up with that. I'm not trying to pull a fast one on you.

25 BY MS. GELSOMINO:

1 **Q.** **Okay. Well, you were telling us about this**
2 other officer who was injured at some other time, right?

3 **A.** Yes.

4 **Q.** **When was that?**

5 **A.** I don't know the years that he had the two
6 separate incidents, but I brought it up with regard to
7 not knowing what traumatic situation affects somebody
8 more. I could guess that being shot in the face is more
9 traumatic than a head-on accident that he didn't get
10 injured in, but that, to him, was not the case.

11 **Q.** **Whatever happened to that officer in his cases,**
12 did it have any impact on your determinations regarding
13 how you treated Mason in this case?

14 **A.** Not directly.

15 **Q.** **No?**

16 **A.** Not directly.

17 **Q.** **Okay. So I appreciate you giving the examples.**
18 I'm trying to move this along particularly given the
19 fact that my Internet seems to hate me, so I'm going to
20 try and keep my questions narrow and hopefully you could
21 do the same with your answers. Regarding Mason, you
22 indicated that he seemed to have dealt with prior
23 shooting incidents fine. Was there some difference in
24 how he handled the shooting of Tyree?

25 **A.** This decision was made soon afterwards, so we

1 didn't have an opportunity to compare.

2 **Q. Did he ever have a fitness for duty examination**
3 or anything after his period of administrative leave?

4 A. Well, a fitness for duty exam is something that
5 is described in the contract, so I'm sure that he met
6 with a psychologist at some point in time and was
7 interviewed by that psychologist to determine whether or
8 not he was ready to go back to work. I wouldn't
9 describe that as a fitness for duty examination because
10 there's contractual language about those.

11 **Q. After an officer involved shooting does the**
12 officer need to submit to a fitness for duty evaluation?

13 A. We don't call it a fitness for duty evaluation.
14 We describe it as a checkup with the psychologist. A
15 fitness for duty is a very formal process that has to be
16 officially requested and all of that. Follow the
17 contractual rules.

18 **Q. Did that ever happen for Mason?**

19 A. Not to my knowledge.

20 **Q. Have you ever requested or participated in any**
21 kind of fitness for duty evaluation of any officer while
22 you were chief?

23 A. Yes. I think it was while I was chief, but it
24 might not have been. Most always it involved somebody
25 that is experiencing medical issues, occasionally

1 psychological issues. If somebody has threatened
2 suicide, then generally there's going to be a
3 determination of whether or not they're capable of
4 coming back to work. There are so many rules about this
5 and the city itself does not, in my opinion, have a lot
6 of leeway with regard to ordering such exams. And up
7 until recently I think they didn't have anybody under
8 contract to provide those examinations because that
9 person is then working for the city to conduct the
10 examination.

11 **Q. Right. Okay. So in this case with Mason he did**
12 have an interview with a mental health professional,
13 right?

14 A. All officers are required to see one before
15 they're allowed to return to work.

16 **Q. And Mason did that?**

17 A. I didn't see it happen, but yes. He wouldn't
18 have been back to work without having done that.

19 **Q. Did you ever receive any notification that he**
20 had done that and had been cleared to return to work?

21 A. The deputy chiefs are able to make that
22 decision. The commanders are able to make that
23 decision. So I can't tell you with certainty if I was
24 informed of that or when.

25 **Q. But you assumed that it happened, right?**

1 A. Right.

2 **Q. So even though he's been cleared to return to**
3 work by this mental health professional, you still made
4 the determination that you felt it was safest that he
5 not return to patrol or the streets, right?

6 A. It was the best step moving forward, yes.

7 **Q. Do you think that given his history of uses of**
8 deadly force that it would have been dangerous for the
9 community to put Mason back on the streets?

10 A. I wouldn't describe it as dangerous. Some
11 officers are more active than others in going on, you
12 know, more dangerous calls. Some actually work in
13 different precincts. I remember the SWAT team goes on
14 far more dangerous situations on a regular basis because
15 they're working on highly dangerous warrant services and
16 things like that. Some people are involved in more
17 situations like that because of the assignment that they
18 have, or the desire to engage in calls for service.
19 Some officers might drive more slowly when the situation
20 might be over. I wouldn't describe it as dangerous if
21 he was left on the street. If it had resulted in
22 another shooting and it was justified, if it was Officer
23 Mason defending his life against somebody with a gun
24 that was shooting at him, and him using deadly force, I
25 wouldn't describe that as dangerous.

1 **Q.** Do you think that Officer Mason exhibited a
2 pattern of the use of force that was concerning to you
3 at all?

4 A. Due to the unusual nature of four shoots by a
5 patrol officer, I would say yes. I had at least some
6 concerns that he shouldn't be out there on patrol.

7 **Q.** After his first shooting did you have any
8 concerns about whether he should be on patrol?

9 A. I don't even know how much I was aware of his
10 first shooting. I don't know what year that was, if I
11 was even within the chain of command.

12 **Q.** After his second shooting did the division have
13 any concern about his ability to be on patrol?

14 A. Not to my knowledge.

15 **Q.** After his third shooting did the division have
16 any concerns about his ability to be on patrol?

17 A. The division is an entity, but it's made up of a
18 lot of different people. So you know the chief
19 represents the division, but I don't know who was chief
20 at the time. The division having concerns could be 50
21 people that have concerns and 2000 that don't. It's too
22 much of a generalization.

23 **Q.** Well, you're here to testify on behalf of the
24 division. That's why you've been noticed as this type
25 of witness. So you're testifying for the division as a

1 whole.

2 MR. MILLER: Objection.

3 BY MS. GELSOMINO:

4 **Q. So did the decision after the third shooting by**
5 Brian Mason have any concerns about the safety of him
6 serving as a patrol officer?

7 MR. MILLER: Objection. Go ahead and
8 answer.

9 A. I'm not aware of any.

10 BY MS. GELSOMINO:

11 **Q. Did you have any conversations with Mason**
12 related to the shooting?

13 A. Not that I know of about the shooting itself.

14 **Q. Did you have any conversations with Mason**
15 regarding moving him out of patrol?

16 A. I believe I spoke to him some, but most of the
17 time I was dealing with FOP and the people in his chain
18 of command.

19 **Q. And what were those conversations?**

20 A. What can we do? Where can we put him? How is
21 he feeling? Does he have preferences? You don't want
22 to make it feel like punishment if it's unclear as to
23 the outcome of a particular investigation. So just
24 getting information about where the situation stood, if
25 we were going to have a grievance filed about that.

1 What did other officers think about him getting special
2 treatment. All of that. I believe he ended up going
3 into narcotics, and that's a highly desirable job. I
4 knew there would be some backlash by other officers who
5 would want that type of an assignment potentially
6 grieving that movement.

7 **Q. Were there any grievances filed?**

8 A. I don't recall. There might have been, but I
9 don't recall, because the FOP was involved in that
10 particular thing. But if somebody wants to file a
11 grievance they're obligated to file it. I just don't
12 remember for sure what happened.

13 **Q. Was there any backlash from other officers**
14 **regarding Mason's special treatment?**

15 A. I know that there were people that weren't happy
16 with it, yes.

17 **Q. How do you know that?**

18 A. Just in conversations with various people in the
19 chain of command and people in the division that brought
20 it to my attention.

21 **Q. Who wasn't happy with it?**

22 A. I have no idea who the names were.

23 **Q. Were they in the chain of command or lower**
24 **level, like officers?**

25 A. I would say it happened at different levels.

1 Certainly, as I said, narcotics is a desirable
2 assignment. Even commanders and deputy chiefs might
3 have expressed their concerns about that assignment
4 being given to him.

5 **Q. What was the highest rank of a person who**
6 complained regarding the special treatment?

7 A. I don't know if I could use the word complained,
8 just discussed concerns. And I imagine some of the
9 deputy chiefs expressed their thoughts about it because
10 that's who I saw on a more regular basis, commanders and
11 deputy chiefs, but I don't remember who specifically.

12 **Q. Can you tell me the name of any specific**
13 commander or deputy chief who expressed concerns to you
14 regarding the special treatment of Mason?

15 A. I can't give you any specific names.

16 **Q. Did anyone create any documentation, memos or**
17 notes or anything regarding the reassignment of Mason?

18 A. There was an agreement with the FOP about this
19 reassignment, and I would imagine there might have been
20 some e-mails about it. There was probably some type of
21 a memorandum of understanding, or letter of agreement
22 with the Union on what was stipulated, and it was going
23 to be one-year with a reevaluation at the end of the
24 year.

25 **Q. Has there ever been a reevaluation of the**

1 **reassignment?**

2 A. There was, and it was continued.

3 **Q. How many times has it been reevaluated?**

4 A. I recall at least once. I don't know if other
5 times happened after I retired or not.

6 **Q. Has Mason received any kind of counselling or**
7 retraining or any other interventions regarding his use
8 of force?

9 A. Everybody gets training. I don't know about him
10 specifically about his own use of force. I'm not aware.

11 **Q. Has he ever grieved this reassignment?**

12 A. I don't recall an official grievance, but I know
13 that he wasn't necessarily happy about the reassignment
14 initially, but recognized that this was going to be
15 where it was, or what hours we were offering, and those
16 kinds of things. I think that he started to like the
17 assignment after some time.

18 **Q. How was that expressed to you?**

19 A. I may have ran into him at an event or something
20 like that. I believe he grew a beard and was enjoying
21 the job having the opportunity to do detective work
22 basically.

23 **Q. Okay. So, now there are officers in the**
24 divisions of police that have more shootings than Mason,
25 right?

1 A. I know there have been in the past, and I
2 believe that there very well could be some SWAT team
3 members that have had more than four.

4 **Q. So why hasn't the division moved to have these**
5 other officers who have more than four uses of deadly
6 force to another division similar to how you had Mason
7 reassigned?

8 A. All of their investigations have been
9 investigated. They weren't found to be outside of
10 policy. There was no indication that it was unusual in
11 that sense that -- you know, it would be usual in the
12 sense that if you're constantly going on robbery
13 surveillance, stakeouts, arresting high profile,
14 dangerous felons, that you're going to run into
15 situations like that. It's not unusual for a SWAT
16 officer, but it would be more unusual for a patrol
17 officer.

18 **Q. I understand that. But if a SWAT officer has**
19 six or eight uses of deadly force does that become
20 unusual? There has to be some number where it's unusual
21 even for a SWAT officer, right?

22 A. Depending, yeah, on their assignment. If you're
23 the first person in the door you're going to have more
24 than the last person in the door generally, because
25 you're going to have eight guys going in at one time.

1 So, depending on your role in that particular section it
2 may or may not be. There's no number. It would be
3 based on the information that we had about those
4 shootings, if there was a pattern. If they were
5 happening quickly enough EARS would have looked at them
6 too.

7 **Q. Let me ask you this: Have you ever moved to**
8 have any other officer other than Mason reassigned as a
9 result of the use of deadly force?

10 A. Not that I recall.

11 **Q. Has the division ever evaluated some of the SWAT**
12 officers who have multiple uses of deadly force to
13 determine whether or not there was some circumstances
14 that made it unusual to have that many uses of force?

15 A. It would be the responsibility of the SWAT chain
16 of command to look out for that, yes.

17 **Q. Has that ever happened?**

18 A. I can't talk in specifics, but I believe it
19 would be happening on a regular basis.

20 **Q. You don't know of any SWAT member who has ever**
21 been raised to your level as having potentially a
22 pattern of unusual uses of force, right?

23 A. Correct.

24 **Q. Are you aware that Mason was initially removed**
25 from the hiring process because of concerns about

1 dishonesty?

2 A. I don't recall that information.

3 **Q. Knowing that, would that impact your**
4 determinations about whether or not any of the use of
5 force were justified?

6 A. Not knowing what the circumstances were, I
7 wouldn't have any reason to believe that they would
8 impact the decisions that were made about the
9 investigations.

10 **Q. You agree that any concern about dishonestly in**
11 an officer is extremely significant, right?

12 A. I've already testified that it's an egregious
13 violation of our rules if you lie. Now, if you lie
14 about something that had nothing to do with police work
15 in your background or something like that, that would be
16 different. But certainly what type of a lie it was;
17 what it was about. Whether it was off-duty, on-duty.
18 You know, some people lie about whether or not they were
19 home when somebody knocked on the door.

20 **Q. Well, sure. But do you agree that the concerns**
21 for honesty begin in the hiring process?

22 A. Absolutely. If we feel that you've lied during
23 that process at all, we'll kick you out.

24 **Q. Because that's an indicator right from the**
25 beginning of the relationship with a police department

1 that there could be some concerns for a future officer's
2 honesty and credibility, right?

3 A. Correct.

4 **Q. Are you aware that there's an allegation that**
5 **Mason used a racial slur against Tyree King before he**
6 **was shot and killed by him?**

7 A. I'm aware of that.

8 **Q. Was that ever investigated?**

9 A. I don't recall a specific investigation about
10 that aspect of it, no. And I don't know when the
11 allegation was made.

12 **Q. When did you become aware of it?**

13 A. Probably as part of this lawsuit.

14 **Q. Would you agree that -- would it be concerning**
15 **to you to know that an officer within the division of**
16 **police is using racial slurs against people in their**
17 **conduct as a police officer?**

18 MR. MILLER: I'm sorry. Was the
19 question accused of using or using?

20 MS. GELSOMINO: I think I said accused
21 of using.

22 MR. MILLER: Fair enough.

23 BY MS. GELSOMINO:

24 **Q. Even if there was an accusation that there was a**
25 **racial slur, that would be concerning to you, right?**

1 A. Yes.

2 **Q. Why?**

3 A. Because we try to make sure that all of our
4 officers are acting in a bias-free manner. If they
5 exhibit bias, then I want to know what the root of that
6 is.

7 **Q. And did you do anything ever to investigate the**
8 **root of any potential bias from Officer Mason?**

9 A. I know that I did not. A complaint about, you
10 know, this or anything has to be filed within a certain
11 period of time for us to be able to investigate it. If
12 it comes in past the deadline we're not allowed to
13 investigate it.

14 **Q. Is that per the contract rules?**

15 A. Yes.

16 **Q. Did you or anyone from the division have any**
17 **conversation with the coroner's office regarding not**
18 **releasing information to the public regarding uses of**
19 **deadly force by officers?**

20 A. Can you ask the question again?

21 **Q. I'm wondering about conversations between the**
22 **division and the coroner's office, and whether there was**
23 **ever any conversation with the coroner's office**
24 **indicating that the division does not want the coroner's**
25 **office to release a lot of information related to deaths**

1 caused by officer involved shootings.

2 A. In general or this particular case?

3 **Q. In this particular case first, and then in**
4 **general.**

5 A. I don't believe that I would have reached out to
6 anybody in the coroner's office. I don't recall that
7 that was done in this particular case. I don't know why
8 it would have. It might have been more context involved
9 that I'm not aware of and that might bring back a recall
10 of something, but I'm not aware of that for this
11 specific case. And then, for other cases, no. I'm not
12 aware of any general contacting the coroner's office to
13 not release information.

14 **Q. Okay. Did you ever review the recommendations**
15 **or findings related to whether or not Mason's shooting**
16 **of King was within or not within policy?**

17 A. Did I review the recommendations?

18 **Q. Did you review this investigation?**

19 A. I don't recall reading the entire investigation,
20 no.

21 **Q. The chain of command found that the shooting was**
22 **within policy, right?**

23 A. Yes.

24 **Q. Did you ever review that finding?**

25 A. I don't recall what I would have read, but I do

1 know that I would have discussed, you know, some of the
2 aspects of it, but I don't remember with who, whether it
3 was CIRT or Firearms Review or the chain of command.
4 But yes, I would have been paying attention as to the
5 outcome of that ruling.

6 **Q. In terms of a decision maker though, did you**
7 have to approve that decision from the chain of command
8 in any way?

9 A. I don't have to approve it if they all decide
10 it's within policy. If I felt that they were missing
11 something I certainly would have weighed in and said, "I
12 think you're missing something, reevaluate it."

13 **Q. Did you do that here?**

14 A. Not to my knowledge.

15 **Q. I believe that you were quoted in a news article**
16 saying, "I will not let an officer out on the street to
17 perform their job if I do not trust them." Do you
18 recall saying that?

19 A. I probably have said it publicly, privately and
20 in training.

21 **Q. And you believe that, right?**

22 A. I do.

23 **Q. Was trust a factor in you deciding to reassign**
24 **Mason?**

25 A. What I can say is that I can't say that if he

1 goes back out there on the street I don't trust that
2 he's going to avoid another situation like that the very
3 next day. He might be put into that situation and take
4 action. So it's not a matter of not trusting him, it's
5 a matter of not trusting the circumstances might arise
6 where he could be involved in another situation.

7 **Q. You don't want him to be put back into another**
8 situation where he may have to use deadly force?

9 A. At that time, yes.

10 **Q. How about now?**

11 A. I mean, all police officers that are active
12 could be at any point in time. So I don't have any
13 reasons to believe that he is making bad decisions
14 because all of the shootings that he has been involved
15 in have been determined to be within policy, based on
16 those facts as far as analyzing it as a pattern there
17 still doesn't seem to be tactical decisions that he's
18 making that are poor, like walking out into street and
19 firing wildly. So it could happen because he's still an
20 active officer. But it's not a matter of thinking that
21 he is going to go out there and do something stupid and
22 harm somebody.

23 **Q. Okay. Did you have any other involvement in**
24 anything related to the shooting of Tyree King that we
25 haven't already discussed?

1 A. Not that I can recall.

2 **Q. Okay. I'm going to move on to the shooting of**
3 Deaunte Bell-McGrew then. When did you first learn of
4 that shooting?

5 A. I would have been called that night if I was in
6 town. I always got called. Sometimes if I was out of
7 town, I would get called. I'm pretty sure that I
8 responded. Sometimes when I respond I didn't go to the
9 scene, I just went to wherever the officers were
10 temporarily. I do believe that I went to that scene
11 though because I think there's a carry out, and I was
12 just down the street that was the scene of another
13 shooting or something along those lines, but I can't be
14 certain. It feels like I did go.

15 **Q. What did you do while you were there on the**
16 scene?

17 A. Usually when I go to the scene I get briefed by
18 either the public information officer or the CIRT
19 sergeant on what they had been able to ascertain as far
20 as positioning of the officers, in this case where the
21 vehicle was, the lighting conditions, I would take a
22 look around at that.

23 **Q. Did you do that in this case?**

24 A. I believe I did. I can't say with certainty,
25 but I believe so.

1 **Q.** **Okay. That's fair. It's just what you**
2 remember, and if you don't remember you could tell me
3 that. What was your next involvement with the
4 investigation or anything in relation to this shooting?

5 **A.** I would have been briefed by somebody about the
6 status of that and told when certain milestones had been
7 passed, and then told probably, or read sometimes that
8 it had been ruled upon.

9 **Q.** **Did you review the investigation?**

10 **A.** You broke up.

11 **Q.** **Did you review the investigation at all?**

12 **A.** I don't have specific knowledge of reviewing
13 that one.

14 **Q.** **Did you review the chain of command findings?**

15 **A.** Not to my knowledge.

16 **Q.** **Okay. In this case FRB and the chain of command**
17 both agreed that the shooting was within policy. So did
18 you have any -- did you ever review that or weigh-in on
19 that in any way?

20 **A.** Not to my knowledge. The routing sheet would
21 say if it was ever sent to my office.

22 **Q.** **So in this case, because FRB and the chain of**
23 command agreed, the top of the chain of command would be
24 the final decision-maker in this case?

25 **A.** The deputy chief.

1 **Q. The duty chief would have been the final**
2 decision-maker?

3 A. Yes.

4 **Q. Did you remember anyone consulting with you**
5 about their findings?

6 A. I know at some point in time I was aware that it
7 was within policy. Somebody told me.

8 **Q. You were advised of it?**

9 A. Yes.

10 **Q. Did anyone ever ask for your input?**

11 A. Not to my knowledge.

12 **Q. Okay. Do you agree that the shooting of Deaunte**
13 Bell-McGrew was within policy?

14 A. Based on the information that I was given, I
15 don't have any reason to believe that it wasn't.

16 **Q. What information did you rely upon to make that**
17 determination?

18 A. I believe the officers gave statements that they
19 were trying to arrest a person, they reached for a gun,
20 and the weapon was found in the vehicle near him.

21 **Q. Did you actually read those statements?**

22 A. I don't recall.

23 **Q. Okay. Are you aware that this interaction began**
24 with a consensual encounter?

25 A. Yeah. I don't know for sure how it began, but I

1 might have been told that in the past.

2 **Q. Did you have any concerns about the legitimacy**
3 of the consensual encounter?

4 A. No.

5 **Q. Are you aware that Deaunte Bell-McGrew was not**
6 alleged to have ever been holding a gun?

7 A. By the officers you mean?

8 **Q. Yeah. The officers never said that he was**
9 holding the gun. Did you know that?

10 A. I don't recall that specific information.

11 **Q. Knowing that, does that impact your opinion**
12 about whether or not the shooting was justified?

13 MR. MILLER: Standing objection on the
14 30(b)6 moving into hypothetical stuff.

15 A. I feel like that's not all of the context.

16 BY MS. GELSOMINO:

17 **Q. Would that have been an important factor in**
18 determining whether or not the shooting was in or
19 out-of-policy?

20 A. It could have been a factor absolutely if the
21 officers said that they -- I would want to know more, I
22 guess. What were the other facts.

23 **Q. Did you have any other involvement into the**
24 shooting of Deaunte Bell-McGrew that you haven't told me
25 about?

1 A. Not that I recall.

2 **Q. In general in the division, has the division**
3 ever found that a police shooting was unnecessary?

4 A. That's not a finding that we use. So I'd have
5 to say no, because we have a finding of whether or not
6 it was within policy or outside of policy, and the
7 policy does not require it being necessary. It requires
8 it being objectively reasonable.

9 **Q. Has the division ever reviewed a police shooting**
10 and come to the position that it was excessive?

11 A. Excessive, you know, implies different things.
12 One bullet unnecessary and unreasonable and all of that
13 could be excessive by some definition. Or, you know,
14 multiple shots, certainly there's been analysis of some
15 shootings that the first two bullets were reasonable,
16 were all of the other ones; whether it's one, two,
17 three, four all necessary? That has been analyzed
18 before, yes.

19 **Q. And then the conclusion has been that at least**
20 some of the shots were excessive?

21 A. That's a possibility. I remember one case that
22 I was concerned about where an officer fired, I believe,
23 six shots, and it was into a vehicle that was in a
24 parking spot. He was afraid of being run over by the
25 vehicle, but as the car pulled out he basically followed

1 that car with shots like in like an arc, and so, I know
2 that I had concerns about all of those shots. Maybe the
3 first one was okay, but the other ones weren't. I just
4 cannot remember the outcome for that particular one.
5 The officer's name is Altharr, A-L-T-H-A-R-R, I believe.
6 That's a possibility of one of those cases.

7 **Q. Okay. Have you ever reviewed a police involved**
8 **shooting and come to your own opinion that the shooting**
9 **was unnecessary?**

10 A. Again, I don't make the decision based on
11 necessary or not. It's whether it's within policy or
12 not.

13 **Q. Have you ever reviewed a police shooting and**
14 **come to the conclusion in your own opinion that the**
15 **shooting was excessive?**

16 A. Well, I think I've already testified that
17 Camp-Donovan was outside of policy. One bullet was
18 excessive, but we don't rule it that way. We rule it
19 in-policy or out-of-policy.

20 **Q. Okay. Have you ever reviewed a shooting and**
21 **come to the conclusion in your own opinion that the**
22 **shooting was unjustified?**

23 A. Unjustified would be out-of-policy, so, yes.

24 **Q. Okay. Is it your opinion that all out-of-policy**
25 **shootings are unjustified?**

1 A. I think they're basically one in the same.

2 **Q. Okay. I understand that at least some point you**
3 were part of the International Association of Chiefs of
4 Police. Is that true?

5 A. You're breaking up. But I think the question,
6 was I a member of the International Association of
7 Chiefs of Police, yes.

8 **Q. Do you believe that the policies promulated by**
9 the IACP are generally accepted standards in law
10 enforcement?

11 A. There's so many it's hard to generalize.
12 They're accepted by some, but it is international, so
13 we're talking the whole world. Different countries have
14 different laws and all of that. Sometimes they're not
15 far enough. And we have stronger policies then IACPs.
16 Sometimes ours are modified versions of those.

17 **Q. Do you believe that the IACP is an organization**
18 that the division should look to for guidance in best
19 practices?

20 A. Yes.

21 **Q. And you have done that?**

22 A. Absolutely.

23 **Q. Okay. And do you believe that the division**
24 should continue to do that?

25 A. Absolutely.

1 **Q. Okay. How about with the Ohio Association of**
2 Chiefs of Police, is that similarly an organization that
3 you believe the division should look to for guidance in
4 best practices in policing?

5 A. I'm not sure that they provide that kind of
6 guidance.

7 **Q. Okay.**

8 A. They don't model policies. Governor Kasich
9 created a commission that started coming up with
10 policies and requiring basically agencies to try to
11 follow those, but that's not OACP. I'm not aware of a
12 lot of policies that OACP has put out.

13 **Q. Okay. Are there other organizations that you**
14 deem that the division should be looking to for guidance
15 in the best practices?

16 MR. MILLER: Objection. Beyond the
17 scope of the 30(b) destination.

18 A. The division should look at all the resources
19 that they can. I was a member of the Major City Chiefs
20 Association. I was also a board member of the
21 association. It's 70 largest cities.

22 BY MS. GELSOMINO:

23 **Q. What was that called?**

24 A. Major City Chief's Association. I was a member
25 and became a board member as well. I was part of that

1 decision-making for that organization. That's the 70
2 largest cities in the US and Canada, and they meet three
3 or four times a year. They came up with policies with
4 regard to a lot of different things. Some of them were
5 guidance for chiefs; guidance for departments. I paid
6 attention to that. I participated in testifying at the
7 21st Century Policing Commission that President Obama
8 did. I flew out to Phoenix and testified in their
9 training.

10 **Q. You testified about what?**

11 A. Training and supervising. The Police Executive
12 Research Forum, we've hired them to come in and to take
13 a look at different aspects of division things. They
14 analyzed Internal Affairs a few years ago and created a
15 report. We looked at a number of policies and model
16 policies, if you will, when we were implementing
17 policies for body camera use. The division does already
18 look at a lot of different sources for information about
19 what our policies should be. And don't forget, that we
20 comply with the standards of Commission for Law
21 Enforcement Agencies. We've been accredited since 1999
22 and they have 450 plus requirements for policies in all
23 of those different areas, and we've been in compliance
24 with those standards since '99, and every three years
25 we've been reaccredited and have policies on many

1 different things.

2 **Q. With the Police Executive Research Forum has the**
3 division ever had them come in to review anything
4 related to discipline or the use of force?

5 A. You broke up a little bit. About what?

6 **Q. Discipline or the use of force.**

7 A. They looked at Internal Affairs.

8 **Q. Right.**

9 A. Internal Affairs isn't exactly about discipline.
10 Use of force, no, I don't believe.

11 **Q. Okay.**

12 MS. GELSOMINO: I'm going to take a
13 quick break just to look at my notes and figure out how
14 to wrap this up.

15 - - - -

16 (Thereupon, an off-the-record discussion was held.)

17 - - - -

18 BY MS. GELSOMINO:

19 **Q. We talked at length about your determination**
20 that the England shooting by Abel was within policy,
21 right?

22 A. Which one?

23 **Q. The shooting of England by Abel.**

24 A. Yes. Was within policy.

25 **Q. So was that your decision regarding that**

1 **shooting consistent with your view of how to interpret**
2 and apply the policies of the division of police
3 regarding the use of force?

4 A. Yes.

5 **Q. Was your decision of finding the England**
6 shooting within policy consistent with your view with
7 how to interpret and apply the law regarding the use of
8 force?

9 MR. MILLER: Objection. Go ahead and
10 answer.

11 A. Well, I would say that I have an understanding
12 of the rulings of the Supreme Court with regard to
13 officers' use of deadly force.

14 BY MS. GELSOMINO:

15 **Q. And did you make that decision regarding the**
16 England shooting in the manner that was consistent with
17 your understanding of the law and decisions of the
18 Supreme Court regarding the use of force?

19 MR. MILLER: Objection. Go ahead and
20 answer.

21 A. Yes. I did not find that he had committed a
22 criminal offense.

23 BY MS. GELSOMINO:

24 **Q. And is this the same understanding regarding the**
25 interpretation and application of the policies of the

1 division of police that you apply when making all
2 disciplinary determinations?

3 A. I'm not sure I understand.

4 **Q. So your application and interpretation of the**
5 policies that led you to a conclusion in England, right,
6 have you applied that same understanding of the
7 interpretation and application of the policies of the
8 division of police to all of your other disciplinary
9 determinations that you've made?

10 A. Yes.

11 **Q. And have you similarly applied your same**
12 understanding of the laws and the constitutional
13 precedent that impacted your findings in England, have
14 you used that same understanding of the law when making
15 all of your other disciplinary determinations?

16 MR. MILLER: Objection. Go ahead and
17 answer.

18 A. I would say yes.

19 BY MS. GELSOMINO:

20 **Q. Is this the same -- do you expect your designees**
21 and subordinates to apply the same determination of law
22 and policy when they're making their disciplinary
23 determinations?

24 MR. MILLER: Objection as to form in
25 combination law and policy.

1 MS. GELSOMINO: I can break it up.

2 BY MS. GELSOMINO:

3 **Q. Do you expect your designees and subordinates to**
4 apply this same application of the policies in the
5 division of police when making their disciplinary
6 determinations?

7 A. I'm not clear on what the same interpretation
8 is, but, yes, they are to use their understanding of our
9 rules and policies when making decisions.

10 **Q. Thank you. And what I meant by same was the**
11 consistent of your understanding of the determination of
12 the policies?

13 A. I don't think that I have any way to tell all of
14 the division members what my interpretation is. There
15 are too many variables to my interpretation of the rules
16 and policies, so we do training about these policies.
17 We give examples. The legal advisor from the city
18 attorney's office does inservice training every single
19 year about interpretation. You have to understand when
20 I became an officer in 1979 Graham v. Connor didn't
21 exist. That shows how old I am. But we have to
22 constantly update people on the rules, the law, the
23 interpretations of that law, but I don't think that it's
24 possible to say same interpretation.

25 **Q. Okay. That's fair. But you expect your**

1 **designees and subordinates to apply the policies of the**
2 division of police in a way that's consistent with the
3 training of the division of police making disciplinary
4 determinations, right?

5 A. Training, the writings, yes. All of that.

6 **Q. And you expect your designees and subordinates**
7 to apply the law consistent with their training and the
8 information given to them regarding the law from the
9 division of police when making their disciplinary
10 determinations, right?

11 A. Yes. Some of the decisions that they make
12 aren't impacted by the law, but yes.

13 **Q. When the law is impacted then you expect them to**
14 apply it as they're trained, right?

15 A. Yes.

16 **Q. And that expectation would apply all the way**
17 down the chain of command, correct?

18 A. Yeah.

19 MS. GELSOMINO: Okay. I think that's
20 all I have for you today.

21 MR. MILLER: We'll read.
22
23
24
25

I do further certify that I am not a relative, employee of or attorney for any of the parties in the above-captioned action; I am not a relative or employee of an attorney of any of the parties in the above-captioned action; I am not financially interested in the action; and I am not, nor is the court reporting

1 firm with which I am affiliated, under a contract as
2 defined in Civil Rule 28(D).

3
4 IN WITNESS HEREOF, I have hereunto set my hand and
5 affixed my seal of office at Cleveland, Ohio on December
6 18th, 2020.

7
8
9 Megan Medved

10
11 Megan A. Medved, a Notary Public
12 in and for the State of Ohio.
13 My Commission expires 9/17/23
14
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